

Staff Summary Report

REVISED



Council Meeting Date: 12/04/03

Agenda Item Number: 21

SUBJECT: Request approval of the Donation Agreement and Escrow Instructions between Union Pacific Railroad Company and the City of Tempe.

DOCUMENT NAME: 20031204casv03 **TRANSPORTATION PLANNING (1101-01)**

SUPPORTING DOCS: Yes

COMMENTS: Request approval by the City of Tempe to acquire real property interests in the Creamery Branch Spur Line from Union Pacific Railroad Company. The Creamery Branch Spur commences at the intersection with Union Pacific's main railroad line east of 3rd Street and Ash Avenue and terminates at University Drive, east of Dorsey.

PREPARED BY: Larry Schmalz, Senior Planner (Ext. 8924)

REVIEWED BY: Mary O'Connor, Deputy Public Works Manager (Ext. 8819)

LEGAL REVIEW BY: Marlene A. Pontrelli, City Attorney (Ext. 8120)

FISCAL NOTE: No fiscal impact. Union Pacific is donating the property to the City to be used for the Light Rail Project and for a potential future City multi-use path in the portion outside of the light rail project area.

RECOMMENDATION: Authorize the Mayor to execute the Donation Agreement and Escrow Instructions between Union Pacific Railroad Company and the City of Tempe.

ADDITIONAL INFO: The City Council previously authorized staff at the December 19, 2002 Council Meeting, Agenda Item #16 to acquire the several properties from Union Pacific Railroad. The acquisition of the Creamery Branch is one of the items previously approved.

**DONATION AGREEMENT
AND ESCROW INSTRUCTIONS**

Between

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

DONOR

And

**CITY OF TEMPE,
a municipal corporation
created under the provisions of Arizona Law**

DONEE

“Creamery Branch”

DATED: December 12, 2003

Escrow Holder: Chicago Title Insurance Co.
55 East Thomas Road, Suite 301
Phoenix, AZ 85012
DeWayne C. Huffman, CSEO

Escrow No. 2134557-05

Date of Opening of
Escrow: _____

DONATION AGREEMENT AND ESCROW INSTRUCTIONS

"Creamery Branch"

THIS DONATION AGREEMENT AND ESCROW INSTRUCTIONS is made as of December 12, 2003, ("Execution Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Donor"), and CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law ("Donee").

ARTICLE I PROPERTY

1.1 Property. Donor agrees to donate to Donee, and Donee agrees to accept from Donor that certain real property and improvements (including, without limitation, all rails, ties, fastenings, switches and frogs complete, bumpers, and other track materials, signals and installed communications equipment, industrial drill tracks, industrial spur tracks, railroad crossing signs and appurtenances thereon, which shall be transferred via Donative Bill of Sale in the form attached hereto as **Exhibit A-1**, but excluding improvements not owned by Donor (the "Property") in Tempe, Maricopa County, Arizona, shown on the print attached hereto as **Exhibit A** and more particularly described in the form of Quit Claim Deed attached hereto as **Exhibit B** (the "Deed"), subject to the terms and conditions set forth herein, any and all applicable federal, state and local laws, orders, rules, regulations, any and all outstanding rights of record or open and obvious on the ground, and all matters set forth in the Deed.

ARTICLE II DONATION

2.1 Donation. The parties acknowledge that the Property is being donated to Donee as a charitable contribution. At Closing, Donee agrees to execute and furnish to Donor Internal Revenue Service Form 8283 acknowledging receipt of the Property as a charitable contribution.

ARTICLE III "AS IS" TRANSFER; RELEASE; INDEMNITY; INSPECTION

3.1 As Is Transfer; Release; Indemnity.

3.1.1 "As Is" Transfer. Donee and its representatives, prior to the Closing Date, will have been afforded the opportunity to make such inspections of the Property and matters

related thereto as Donee and its representatives desire, including, without limitation, governmental laws and regulations to which the Property is subject, and Donee shall accept the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Donee acknowledges and agrees that the Property is to be transferred and conveyed to and accepted by Donee in an "as is" condition with all faults, and that the Property has been used as a rail corridor, and for various commercial and industrial uses. Donee further acknowledges that Donee has received, reviewed and is knowledgeable of the matters described in **Exhibit C** attached hereto and made a part hereof (collectively, the "Property Materials"). Except as expressly set forth in this Agreement, Donor makes no representation or warranty as to the accuracy or completeness of said Property Materials. Donor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters; in particular, but without limitation, Donor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Donee acknowledges that it is entering into this Agreement on the basis of Donee's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions and Donee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

3.1.2 Release. Donee, for itself, its successors and assigns, hereby waives, releases, remises, acquits and forever discharges Donor, Donor's employees, agents, or any other person acting on behalf of Donor, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Donee now has or which Donee may have in the future on account of or in any way arising out of or in connection with the Condition of the Property, including, without limitation, the known or unknown physical or environmental condition of the Property (including, without limitation, any contamination in, on, under or adjacent to the Property by any Hazardous Materials), or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste regulated by or subject to any local governmental authority, any agency of the State of Arizona, or any other agency of the United States Government, including, without limitation, any material or substance which is (A) defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance", "hazardous material", "toxic material", "toxic substance", or words of similar import, under any federal, state or local governmental rule, regulation, ordinance, statute or act; (B) petroleum and any petroleum by-products; (C) asbestos; (D) urea-formaldehyde foam insulation; or (E) polychlorinated biphenol.

3.1.3 Indemnity. From and after Closing, Donee shall, to the maximum extent permitted by law, indemnify, defend and save harmless Donor, its affiliates, their employees,

agents, officers, successors and assigns, from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, losses, costs, liabilities and expenses, including attorney's fees, in any way arising out of or connected with changes in the Condition of the Property post-Closing, including, without limitation, changes in the physical or environmental condition of the Property (including, without limitation, any new contamination in, on, under or adjacent to the Property by any Hazardous Materials), or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act. The parties agree that the provisions of this Section 3.1.3 do not apply to any changes in the Condition of the Property post-Closing, if such changes are caused by Donor, its contractors or agents; provided, however, that any such changes caused by Donor, its contractors or agents, shall not affect the enforceability of the release set forth in Section 3.1.2 with respect to the Condition of the Property prior to Closing. The parties further agree that there shall be a rebuttable presumption that all Conditions of the Property have arisen post-Closing.

3.1.4 Survival. The provisions of this Section 3.1 shall survive the Closing and the delivery of the Deed.

3.2 Inspection.

3.2.1 Donee and its representatives (including architects and engineers) shall have the right to enter upon and inspect the Property and conduct such boundary and topographic surveys, soil and engineering tests and environmental assessments with engineers or consultants licensed in the State of Arizona as Donee may reasonably require; provided that such inspections and tests shall not materially damage the Property in any respect; provided, further, that such tests and inspections are conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules and regulations; provided, still further, that Donee notifies Donor in writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections are to be conducted on the Property and provides evidence, satisfactory to Donor, of the availability of adequate public liability and other insurance in excess of Donee's self-insured retention of \$1 million, which insurance shall name Donor as an additional insured. Following each entry by Donee on the Property, Donee shall promptly restore the Property to its original condition as existed prior to any such inspections and/or tests. Donee agrees to indemnify, hold harmless and defend Donor and Donor's affiliates ("Donor's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Donor), its and their officers, agents, servants and employees against and from any and all liability, loss, cost, damage or expense (including attorneys' fees) of whatsoever nature growing out of or in connection with personal injury to or death of persons whomsoever (including, without limitation, exposure to hazardous or toxic substances), or loss or destruction of or damage to property whatsoever (including, without limitation, contamination by hazardous or toxic substances and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to the occupation or use of the Property pursuant to this Section 3.2.1 by, or the presence thereon of, Donee, its officers, agents or employees and occurs from any such cause; provided, however, that this indemnity expressly excludes (i) any loss due

to the diminution in value of the Property due to Donee's discovery of any hazardous materials during its inspection of the Property, and (ii) any liability arising from Donee's exposure of any existing hazardous materials on the Property to the extent such exposure occurs in the course of Donee's inspection activities, except to the extent such liability is caused by the negligence or willful misconduct of Donee. Notwithstanding the foregoing, nothing herein shall limit the Donee's confidentiality obligations under Section 11.22, nor limit Donor's rights or remedies in the event such obligations are breached. If Donee should discover any hydrocarbon substances or any other hazardous or toxic substances, asbestos or asbestos-bearing materials, waste or materials subject to legal requirements or corrective action, Donee shall immediately notify Donor of the same. The indemnity obligations of Donee under this Section shall survive any termination of this Agreement or the delivery of the Deed and the transfer of title. As a material consideration for Donor entering into this Agreement, Donee covenants and agrees, upon request by Donor, to promptly deliver to Donor, without charge therefor, the results and copies of any and all surveys, reports, tests, studies or assessments made by or for Donee, development approvals and correspondence with governmental entities with respect to the Property.

3.2.2 Donee covenants and agrees not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Donee; and Donee agrees to indemnify, hold harmless and defend Donor and Donor's affiliates, its and their officers, agents, servants and employees against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to Closing.

ARTICLE IV TITLE TO PROPERTY

4.1 The Deed. At the Closing (as defined in Section 7.2.1), Donor shall execute and deliver to Donee the Deed to the Property in the form of **Exhibit B** attached hereto.

4.2 Leases and Licenses. At Closing, the leases, licenses, other agreements, and supplements thereto, in the records of Donor's Real Estate Department offices in Omaha, Nebraska, in effect for, or applicable to, the Property as of the date of this Agreement (which leases, licenses and other agreements are identified on **Exhibit "B" to Exhibit D**) (collectively, the "Leases and Licenses") will be assigned by Donor to, and assumed by, Donee by duly executed Assignment and Assumption Agreement (the "Assignment") in the form attached hereto as **Exhibit D** and hereby made a part hereof.

ARTICLE V DONEE'S CONDITIONS TO CLOSING

The following are conditions precedent to Donee's obligation to accept the Property. If any of the following conditions are not satisfied prior to Closing, Donee shall not be obligated to accept the Property.

5.1 Approval of Title.

5.1.1 Donee may, at its election and sole cost and expense, obtain from Chicago Title Company ("Title Company") a preliminary title report (the "Title Report") on the Property. If Donee elects to obtain a Title Report, Donee shall furnish to Donor a copy of same, together with copies of all documents referred to therein, when said Title Report is complete. On or before the end of the Feasibility Review Period ("Title Contingency Date"), Donee shall deliver written notice to Donor ("Donee's Title Notice") of all matters of title to the Property disapproved by Donee ("Disapproved Items"). Donee's failure to deliver Donee's Title Notice by the Title Contingency Date shall be deemed to be Donee's approval of the survey and all existing title matters. If Donee timely notifies Donor of Disapproved Items and all or some of the Disapproved Items (except for those Disapproved Items, if any, which will be removed upon the Close of Escrow in accordance with the terms of this Agreement) are not cured or deleted as exceptions to title prior to the Closing Date, Donee shall have the option of either waiving its disapproval of such Disapproved Items and proceeding to the Close of Escrow or terminating this Agreement, in which event the provisions of Section 5.1.3 shall govern. In the event Donee elects to terminate this Agreement pursuant to this Section 5.1, Donee shall notify Donor of its election by written notice no later than the Closing Date. Donee's failure to timely deliver written notice to Donor of its election to terminate shall be deemed to be Donee's election to proceed to the Close of Escrow and to waive its disapproval of such Disapproved Items. In no event shall Donor's failure to cure or delete as exceptions to the Title Policy any Disapproved Items be deemed to be a breach of this Agreement by Donor.

5.1.2 Title Company's willingness to issue a title insurance policy in the amount of the fair market value of the Property, subject only to such exceptions to title as have been approved by Donee as provided in Section 5.1.1 above, shall be a condition precedent to Donee's obligation to accept the Property.

5.1.3 If this Agreement is terminated pursuant to this Section 5.1, each party shall pay an amount equal to one-half (1/2) of the "cost of cancellation of the Escrow" (as hereinafter defined), and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations as defined in Section 11.26 below). The term "cost of cancellation of the Escrow", as used herein shall be the costs accrued and charged by Escrow Holder and the Title Company for the cancellation of Escrow and the preparation of the Title Report, only.

5.2 Survey. Donee may elect, at its sole cost and expense, to obtain a survey of the Property. If Donee so elects, Donee shall furnish a copy of same to Donor and Title Company when said survey is complete.

5.3 Feasibility Review. Donee shall have approved, on or before December 12, 2003 ("Feasibility Review Period"), the condition of the Property and the feasibility of Donee's use thereof. Donee's feasibility review shall pertain to Donee's review of and satisfaction with Donee's engineering studies, soils investigations, environmental assessments, surveys and physical inspection of the Property, and any other matter deemed by Donee to be relevant to the acquisition of the Property. Donee may elect, at any time prior to the expiration of the

Feasibility Review Period, to terminate this Agreement as a result of Donee's disapproval of any of the foregoing matters; provided, however, that if Donee fails to notify Donor and Escrow Holder of Donee's disapproval of the feasibility by written notice delivered to Donor no later than the date of expiration of the Feasibility Review Period, Donee shall be deemed to have approved the feasibility and this condition shall be deemed satisfied. If this Agreement is terminated pursuant to the foregoing provisions of this Section 5.3, neither party shall have any further rights or obligations under this Agreement (except for the Surviving Obligations).

5.4 Compliance by Donor. Donor shall have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Donor, and all representations and warranties made by Donor under this Agreement shall be true and correct as of the Closing Date.

5.5 STB Proceedings. No protest, petition to revoke, or similar objection to the transactions contemplated by this Agreement, nor any request for conditions, shall have been filed with the Surface Transportation Board ("STB").

5.6 No Litigation. No court or agency shall have issued an order restraining the consummation of the transactions contemplated by this Agreement, and no litigation affecting the Property shall have been commenced.

5.7 Freight Obligations. Donee shall have satisfied itself that (a) Donee shall not be deemed to have undertaken any obligation to provide freight rail services by reason of its acquisition of the Property, and (b) the provisions of the Railway Labor Act will not apply to Donee solely by reason of its acquisition of the Property.

5.8 Compliance with Trails Act. The Surface Transportation Board shall have issued and served its Decision and Notice of Interim Trail Use or Abandonment with respect to the Property in STB Docket No. AB-33 (Sub. No. 210X) ("Trails Use Decision"). This Agreement is entered into in accordance with and subject to the National Trails System Act, 16 U.S.C. §1247(d), and the terms and conditions of the Trails Use Decision. If rail service on the Property is reactivated by Donor pursuant to the provisions of the National Trails System Act, then Donor shall repurchase the Property for the then-current fair market value of the Property and all improvements thereon as determined by appraisal. Donee has an unfettered right to petition the STB to cease railbanking on the Property and Donor shall have no right to oppose such petition. The provisions of this Section shall survive the Closing and delivery of the Deed.

ARTICLE VI DONOR'S CONDITION TO CLOSING

The following are conditions precedent to Donor's obligation to donate the Property:

6.1 Compliance by Donee. It is a condition precedent to Donor's obligation to donate the Property that Donee shall have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Donee.

ARTICLE VII OPENING AND CLOSING OF ESCROW

7.1 Opening of Escrow and Escrow Instructions. Upon execution of this Agreement, the parties shall deposit three (3) executed counterparts of this Agreement with Escrow Holder and this instrument shall serve as the instructions to Escrow Holder for consummation of the donation and acceptance contemplated hereby. Escrow Holder shall insert the date of the Opening of Escrow on the upper right hand corner of the first page of this Agreement on each of the three counterparts. The Opening of Escrow shall be the date upon which Escrow Holder has received executed counterparts of this Agreement from both Donee and Donor. Escrow Holder shall deliver to both Donee and Donor a set of counterparts of the Agreement executed by Donee, Donor and Escrow Holder and shall retain a set in Escrow. Escrow Holder shall only be responsible for undertaking such matters in connection with the Closing as are specifically provided for herein or in any additional or supplementary escrow instructions delivered by the parties.

7.2 Closing.

7.2.1 Closing Date. The consummation of the transaction contemplated by this Agreement and recording of the Deed (the "Closing" or "Close of Escrow") shall occur and delivery of all items to be made at the Closing under the terms of this Agreement shall be made on or before December 18, 2003 (the "Closing Date").

7.2.2 Preclosing Conditions. Provided that Escrow Holder can comply with these instructions, that Escrow Holder has received the deliveries described in Sections 7.3 and 7.4 below, that Escrow Holder has not received prior written notice from a party that any condition to such party's obligations has not been fulfilled, or that Donee has elected to terminate its rights and obligations hereunder pursuant to Article V, or Donor has elected to terminate its rights and obligations hereunder pursuant to Article VI, then Escrow Holder is authorized and instructed to (a) record the Deed, (b) deliver conformed copies of the recorded Deed and a fully executed counterpart of the Assignment to Donee and Donor, and (d) deliver the closing statements to Donee and Donor in accordance with Section 7.2.4 below.

7.2.3 Failure to Close. If the Closing does not occur on or before the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party and to Escrow Holder. In the event of such termination and cancellation, neither party shall have any further obligations hereunder (other than the Surviving Obligations), and all documents and other instruments shall be returned to the party depositing the same into Escrow. In the event neither party is in default, the cost of cancellation of Escrow shall be shared equally between Donee and Donor. In the event only one of the parties hereto is in default or if this Agreement expressly so provides, then such defaulting party shall pay for the entire cost of cancellation of Escrow. The termination of this Agreement and cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, that Donee or Donor may have against each other arising out of this

Agreement and the Escrow. If neither party so elects to terminate this Agreement and cancel Escrow, Escrow Holder shall close the Escrow as soon as possible.

7.2.4 Notification; Closing Statements. If Escrow Holder cannot comply with the instructions herein and to be provided, Escrow Holder is not authorized to cause the recording of the Deed or close this Escrow. If Escrow Holder is unable to cause the recording of the Deed, Escrow Holder shall notify Gregg Larsen at 402-997-3552 and Larry Schmalz at 480-350-8924, without delay. If Escrow Holder is able to comply with the instructions herein and to be provided, immediately after the Closing, Escrow Holder shall deliver to Donor at the addresses provided in Section 11.9 a true, correct and complete copy of the Donor's closing statement, in the form customarily prepared by Escrow Holder and shall deliver to Donee at the address provided in Section 11.9 a true, correct and complete copy of Donee's closing statement, in the form customarily prepared by Escrow Holder.

7.3 Deliveries by Donor. Not later than one (1) business day prior to the Closing Date, Donor shall deposit with Escrow Holder the following items:

7.3.1 Deed. The Deed in the form of **Exhibit B**, duly executed and acknowledged by Donor.

7.3.2 Assignment. The Assignment in the form of **Exhibit D** duly executed by Donor.

7.3.3 Donative Bill of Sale. The Donative Bill of Sale in the form of **Exhibit A-1** duly executed by Donor.

7.3.4 Prorations. A sum in an amount equal to the Donor's share of the prorations which are required pursuant to this Article to close Escrow.

7.3.5 Non-Foreign Status Certificate. A Non-Foreign Status Certificate pursuant to Internal Revenue Code Section 1445 duly executed by Donor in the form of **Exhibit E**.

7.3.6 Rent Roll. A rent roll for all Leases updated to within ten (10) days prior to Closing.

7.3.7 Original Leases and Licenses. The Original Leases and Licenses, to the extent the same are in Donor's possession.

7.3.8 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for hereunder which have not previously been delivered.

7.4 Deliveries by Donee. Not later than one (1) business day prior to the Closing Date (or such other time specified below), Donee shall deposit with Escrow Holder the following items:

7.4.1 Prorations and Costs of Escrow. A sum in an amount equal to Donee's share of the prorations and costs of Escrow which are required pursuant to this Article to close Escrow.

7.4.2 Assignment. The Assignment in the form of **Exhibit D** duly executed by Donee.

7.4.3 Internal Revenue Service Form 8283. An Internal Revenue Service Form 8283 completed by Donee.

7.4.4 Donative Bill of Sale. The Donative Bill of Sale in the form of **Exhibit A-1** duly executed by Donee.

7.4.5 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for hereunder which have not been previously delivered.

7.5 Other Instruments. Donor and Donee shall each deposit such other instruments and take such other actions as are reasonably required by Escrow Holder or otherwise required to close the Escrow and consummate the donation of the Property in accordance with the terms hereof.

7.6 Prorations.

7.6.1 All expenses of the Property, including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits, and rentals under any leases shall be prorated and apportioned between Donee and Donor as of 12:01 a.m. on the Closing Date, so that Donor bears all expenses with respect to the Property through and including the date immediately preceding the Closing Date. Donor and Donee hereby agree that any of the aforesaid prorations which cannot be calculated accurately as of the Closing Date shall be prorated on the basis of the parties' reasonable estimates, and shall be recomputed between Donor and Donee when actual tax statements for the year of Closing are received, and either party owing the other party a sum of money based on such subsequent proration adjustment shall promptly pay said sum to the other party, and, if payment is not made within ten (10) days after delivery of a bill therefor, shall pay interest thereon, at the lesser of the rate of ten percent (10%) per annum or the highest rate permitted by law, from the Closing Date to the date of payment. Donor shall be responsible for such taxes or assessments (including, without limitation, possessory interest taxes, if any) as may separately be levied on any rights retained by Donor under Section 1.1. The provisions of this Section 7.6.1 shall survive the Closing and the delivery of the Deed.

7.6.2 All rents, common area maintenance charges, other amounts paid by a tenant of the Property, and other income from the Property attributable to periods prior to the Closing shall be retained by Donor, and all such income attributable to and collected for periods subsequent to the Closing shall be credited to Donee. Donee shall have no obligation to collect any rents or other charges due but uncollected prior to such Closing. All tenant security deposits, if any, shall be transferred to Donee upon the Closing, and Donee shall execute a

document acknowledging receipt of such deposits and agreeing to hold them in accordance with the terms in the applicable Leases.

7.7 Special Taxes, Bonds or Assessments. If, at the time of Closing, any portion of the Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as of 12:01 a.m. on the Closing Date. All installments not then yet due whether or not the same have been prepaid shall not be prorated and Donee shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date shall be credited to Donor. In addition, Donee shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by the City of Tempe, and those for (i) local assessment or improvement districts, (ii) any special tax assessments, (iii) traffic mitigation improvements (iv) park and recreation fees, and/or (v) any other public facility infrastructure or traffic mitigation required or imposed by the City of Tempe. Donee shall assume all such bonds or future assessments without offset or adjustment.

7.8 Costs and Expenses. The costs and expenses of Escrow upon Close of Escrow shall be allocated as follows: Donee shall pay the premium for any title insurance desired by Donee and all other standard costs and charges of the Escrow.

7.9 Disbursement of Funds. On the Close of Escrow, Escrow Holder shall pay all taxes, fees, and costs of Closing, from the monies deposited by the parties, and shall disburse any excess amounts to the party(ies) entitled thereto. Such disbursement(s) may be made by business check(s) mailed to the applicable party(ies) at the address(es) set forth in Section 11.9 hereof.

7.10 Delivery of Documents. Upon the Close of Escrow all instruments and documents shall be delivered forthwith to each party's attorney specified in Section 11.9, and if no attorney is specified, then to such party directly. Escrow Holder shall forthwith deliver to the party entitled thereto the recorded originals of such instruments or documents upon Escrow Holder's receipt of the same.

7.11 Supplemental Taxes. Donor and Donee acknowledge that the Property may be subject to supplemental taxes due as a result of change of ownership taking place through this Escrow. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow and Escrow Holder is released of any liability in connection with same.

ARTICLE VIII REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Representations and Warranties of Donor. Donor hereby represents and warrants to Donee as of the date of this Agreement, as follows:

8.1.1 Organization. Donor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and qualified to do business in Arizona.

8.1.2 Authority. Donor has full statutory power and authority to enter into this Agreement and, subject to necessary regulatory authority, to carry out the obligations of Donor under this Agreement.

8.1.3 Due Authorization. This Agreement has been duly authorized, executed and delivered by Donor. Neither the execution and delivery of this Agreement by Donor, the consummation by Donor of the transaction contemplated thereby, nor compliance or performance by Donor with any of the provisions thereof, does or will violate any judgment, order, law or regulation applicable to Donor or any provisions of Donor's certificate of incorporation or by-laws or result in any material breach of, or constitute a material default under, or result in the creation of, any material liens, charge, security interest or other encumbrance upon the Property (other than created by this transaction) pursuant to any note, bond, indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Donor is a party or by which any of the Property is bound.

8.1.4 Condemnation or Violations of Law. To the best of Donor's knowledge, except (a) as set forth in the Property Materials, (b) for any matter related to Donee, or (c) as previously disclosed to Donee in writing, Donor has not received any written notice of any existing or threatened condemnation or material violation of law.

8.1.5 Hazardous Materials. To the best of its knowledge, except as disclosed in the Property Materials, Donor has no knowledge of (a) any material release of a Hazardous Material, as defined in Section 3.1, heretofore, on or beneath the Property; (b) any receipt by Donor of any written governmental notice that any of the Property is in violation, in any material respect, under any law, or other governmental or judicial requirement, relating to Hazardous Materials; (c) any existing, pending or threatened investigation by any governmental authority under or in connection with any law, or other governmental or judicial requirement, relating to Hazardous Materials; or (d) any other environmental assessment reports on the Property in the records of Donor's Real Estate Department in Omaha, Nebraska or Donor's Environmental Management Group in Omaha, Nebraska.

8.1.6 Litigation; Judgments. To the best of its knowledge, except as disclosed in the Property Materials, Donor has no knowledge of any pending litigation, administrative action, governmental investigation, examination, claim or demand (including, but not limited to, environmental investigations, examinations, claims and demands) whatsoever, nor any judgments, orders or decrees entered in any lawsuits or proceedings, affecting the Property.

8.1.7 Senior Rights. Donor has no knowledge that any tenant or other third party has any agreement or right granted by Donor to purchase all or any part of the Property that is senior to Donee's rights hereunder.

8.1.8 Donor's Pre-Closing Deliveries. Donor represents that, to the best of its knowledge, it has delivered to Donee true and correct copies of any and all valuation maps, Leases and Licenses, and environmental studies and reports in effect for, or applicable to, the Property as of the date of this Agreement to the extent the same are in the records of Donor's Real Estate Department offices in Omaha, Nebraska and Donor's Environmental Management Group offices in Omaha, Nebraska. In the event Donor discovers any additional Leases or Licenses, valuation maps or environmental studies or reports prior to the Closing, Donor shall promptly deliver the same to Donee. Donor has no knowledge of (i) any tenancy or other agreements that materially affect Donor's current use of the Property, other than the Leases and Licenses; or (ii) any material defaults under any of the Leases and Licenses by any party thereunder. To Donor's knowledge, Donor has no unfulfilled financial obligations to tenants or other parties under any of the Leases or Licenses.

8.1.9 National Register of Historic Places. To Donor's knowledge, none of the Property improvements owned by Donor are listed on the National Register of Historic Places, or any comparable Arizona list.

8.1.10 Limitation. As used in this Agreement, the term "current, actual knowledge," or "to the best of its knowledge," or "Donor's knowledge" means and refers only to the current, actual (not constructive) knowledge, without any duty of investigation or inquiry, of Brian Morrissey, General Director Real Estate, Norman D. Siler, Manager-Environmental Site Remediation, Tony Love, General Manager Real Estate, Mark Schulte, Senior Real Estate Manager, Gregg Larsen, Manager Real Estate, Jerry Wilmoth, General Mgr.-Network Infrastructure, Jeff Asay, Assistant General Solicitor, and Gerry Sullivan, General Attorney (collectively, "Donor's Representatives").

8.1.11 Donor acknowledges and agrees that it has offered to donate the Property, that it is not receiving fair market value for the Property, and that it is not entitled to any further assistance under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, *et seq.*), the State of Arizona's relocation laws (A.R.S. § 11-961, *et seq.*), or any other federal, state or local law, ordinance or regulation requiring the provision of relocation assistance to persons displaced by action of public agencies by reason of the transactions contemplated by this Agreement.

8.1.12 Donor shall cooperate with Donee's efforts to remove any encroachments after the Closing, which cooperation shall consist of making Donor's records reasonably available for Donee's inspection and making Donor's employees reasonably available, at Donee's sole cost and expense, to testify.

8.1.13 The foregoing representations and warranties of Donor shall survive the Closing and the delivery of the Deed for a period of five (5) years and shall then expire and terminate.

8.3 Representations, Warranties and Covenants of Donee. Donee hereby represents, warrants and covenants to Donor as of the date of this Agreement and as of the Closing Date, as follows:

8.3.1 Organization. Donee is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Arizona.

8.3.2 Due Authorization. This Agreement has been duly authorized, executed and delivered by Donee. Neither the execution and delivery of this Agreement by Donee, the consummation by Donee of the transaction contemplated thereby, nor compliance or performance by Donee with any of the provisions thereof does or will violate any judgment, order, law or regulation applicable to Donee.

8.3.3 Authority. Donee has full statutory power and authority to enter into this Agreement and, subject to necessary regulatory authority, to carry out the obligations of Donee under this Agreement.

8.4 Mutual Representations and Covenants, Brokers and Finders. No broker's fee, finder's fee, commission or similar compensation shall be paid to principals of Donee or Donor in connection with this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith other than as set forth above, Donee, if such claim is based upon any agreement alleged to have been made by Donee, hereby agrees to indemnify and hold Donor harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Donor may sustain or incur by reason of such claim; and Donor, if such claim is based upon any agreement alleged to have been made by Donor, hereby agrees to indemnify and hold Donee harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Donee may sustain or incur by reason of such claim. The provisions of this Section shall survive the Close of Escrow or termination of this Agreement.

ARTICLE IX CONDEMNATION AND RISK OF LOSS

9.1 If, prior to the Close of Escrow, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Donee shall have the unilateral right, exercisable by giving notice of such decision to Donor within ten (10) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement, in which case Donee and Donor shall each pay one-half (1/2) of the cost of cancellation of Escrow, and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations). If Donee does not elect to terminate pursuant to this Section 9.1, the net proceeds of condemnation awards payable to Donor by reason of such condemnation shall be paid or assigned to Donee upon the Close of Escrow.

9.2 If, prior to the Close of Escrow, the improvements on the Property are destroyed or materially damaged, Donee shall have the unilateral right, exercisable by giving notice of such decision to Donor within ten (10) days after receiving written notice of such destruction or damage, to terminate this Agreement, in which case Donee and Donor shall pay one-half (1/2) of the cost of cancellation of Escrow, and neither party shall have any further rights or obligations

under this Agreement (other than the Surviving Obligations). If Donee does not elect to terminate pursuant to this Section 9.2, the net insurance proceeds, if any, payable to Donor by reason of such destruction or damage shall be paid or assigned to Donee upon the Close of Escrow.

ARTICLE X POSSESSION

Possession of the Property shall be delivered to Donee on the Close of Escrow, subject to any Leases and Licenses identified in this Agreement.

ARTICLE XI MISCELLANEOUS

11.1 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

11.2 Satisfaction or Waiver of Contingencies. The consummation of the Closing shall be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

11.3 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns, except that Donee's interest under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without Donor's prior written approval, which approval shall not be unreasonably withheld or delayed. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and Donee shall be deemed in default hereunder; provided, however, that nothing in this Agreement shall be construed to prohibit Donee's conveyance of all or any portion of the Property, or assignment of its rights as owner of the Property, following the Close of Escrow.

11.4 Parties in Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over against any party to this Agreement.

11.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

11.6 Amendment. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

11.7 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.8 Timeliness. Donor and Donee hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

11.9 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of actual receipt or (i) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Donor: Gregg A. Larsen
UNION PACIFIC RAILROAD COMPANY
1800 Farnam Street
Omaha, Nebraska 68179
Telephone: (402) 997-3552
Facsimile: (402) 997-3601

With copy to: UNION PACIFIC RAILROAD COMPANY
ATTN: Gerard Sullivan
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
Telephone: (402) 271-4468
Facsimile: (402) 271-7107 or 271-5610

If to Donee: Marlene A. Pontrelli
TEMPE CITY ATTORNEY
P.O. Box 5002
Tempe, AZ 85280
(480) 350-8227

(480) 350-8645

With copy to: MILLER, OWEN & TROST
ATTN: Kirk Trost
428 "J" Street, Suite 400
Sacramento, California 95814-2394
Telephone: (916) 447-7933
Facsimile: (916) 447-5195

11.10 Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in the county in which the Property is located.

11.11 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11.12 Intentionally Omitted.

11.13 Counterparts; Facsimile Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by one party to the other by facsimile shall be deemed original signatures and enforced accordingly.

11.14 Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

11.15 Joint and Several Liability. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Agreement.

11.16 Recording. The parties shall record this Agreement or a memorandum thereof.

11.17 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

11.18 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

11.19 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be

construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

11.20 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

11.21 Professional Fees and Costs. If any legal or equitable action, arbitration, or other proceeding, whether on the merits, application, or motion, are brought or undertaken to enforce this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, then the successful or prevailing party or parties in such undertaking shall be entitled to recover reasonable attorney's and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs expenses. The provisions of this Section shall survive the Close of Escrow or the termination of this Agreement.

11.22 Confidentiality. All information, studies and reports relating to the environmental condition of the Property obtained by Donee, either by the observations and examinations of its agents and representatives or as disclosed to it by Donor, shall remain confidential and Donee shall not disclose any such matters to any person or governmental agency except as required by law. If the transaction contemplated herein fails to close for any reason, Donee shall deliver and return to Donor, at no cost to Donor, all such information, reports and studies, and Donee shall make no further distributions or disclosures of any such information, reports and studies. The provisions of this Section shall survive the termination of this Agreement.

11.23 Severability. Any provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

11.24 Merger. Except as otherwise expressly provided herein, the covenants, representations and warranties of Donee and Donor herein shall merge into the Deed to be delivered by Donor to Donee at Closing and shall not survive the Closing of Escrow.

11.25 Survival. Donee and Donor acknowledge and agree that in the event of the termination howsoever of this Agreement, the obligations of and indemnity by Donee in Section 3.2, the confidentiality provisions of Section 11.22, and the provisions of Sections 3.1, 8.4 and 11.21 hereof (hereafter "Surviving Obligations") shall not be limited, impaired or otherwise affected by any termination of this Agreement as a result of such termination.

11.26 Cancellation. This Agreement is subject to cancellation by Donee pursuant to the provisions of A.R.S. §38.511.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

DONOR:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Tony K. Love,
General Manager – Real Estate

DONEE:

**CITY OF TEMPE, a municipal corporation
created under the provisions of Arizona law**

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM

Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF THREE (3) EXECUTED COPIES OF THIS AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ESCROW HOLDER:

CHICAGO TITLE INSURANCE COMPANY

By: _____
DeWayne C. Huffman, Escrow Officer

DONATION AGREEMENT AND ESCROW INSTRUCTIONS
CREAMERY BRANCH
List of Exhibits

- Exhibit A Print of Property**
- Exhibit A-1 Donative Bill of Sale**
- Exhibit B Donative Quit Claim Deed – Creamery Branch**
Exhibit “A” Legal Description
- Exhibit C Property Materials**
- Exhibit D Assignment and Assumption Agreement**
Exhibit “A” Legal Description of Property
Exhibit “B” List of Leases and Licenses to be Assigned
- Exhibit E Certification of Non-Foreign Status**

EXHIBIT A

PRINT OF PROPERTY

CREAMERY
BRANCH

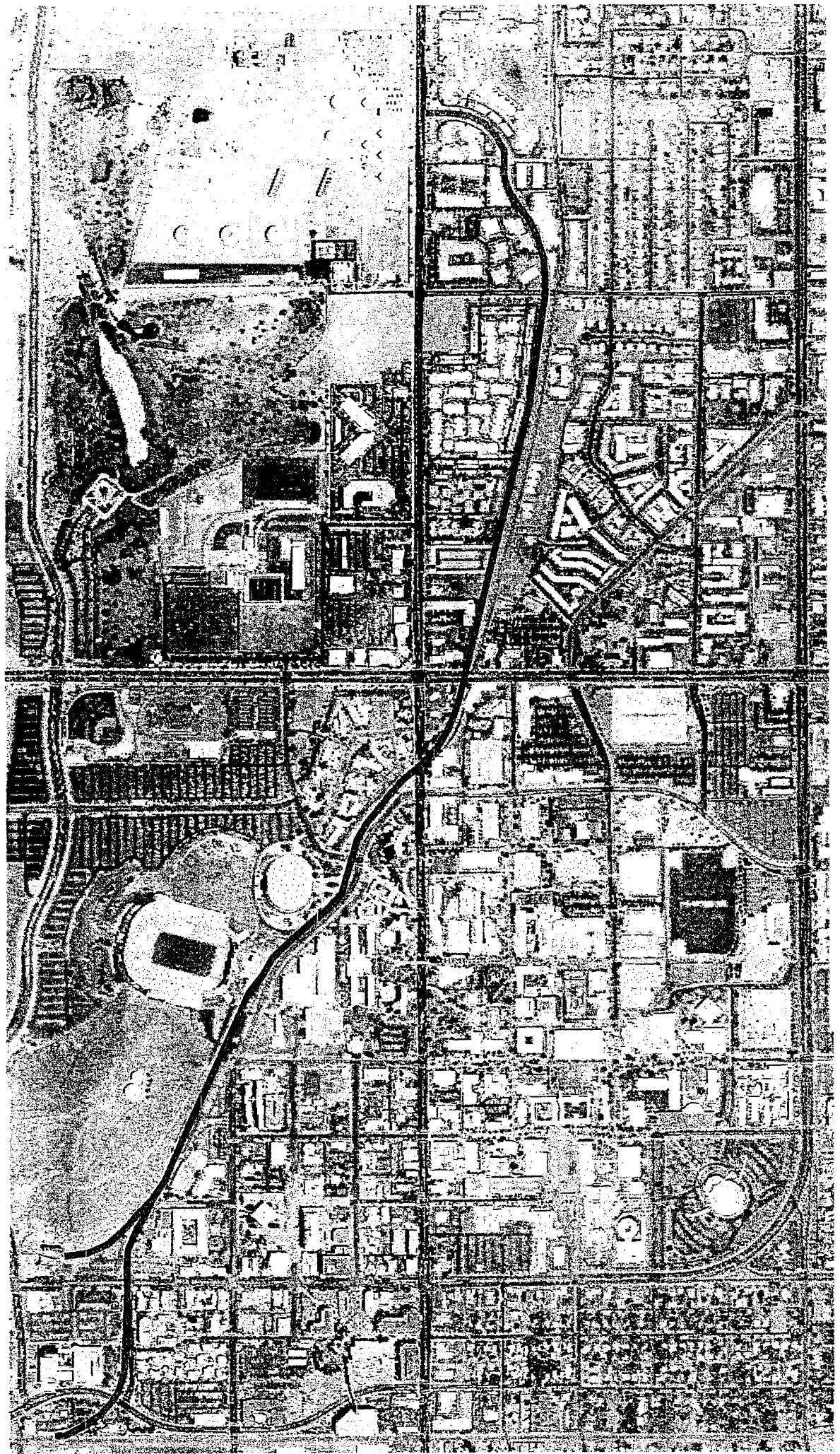


EXHIBIT A-1

DONATIVE BILL OF SALE

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Donor") does hereby **donate**, transfer and deliver to _____, a _____ ("Donee"), its successors and assigns, the following described personal property, to wit:

All rail trackage and appurtenances, including, without limitation, all rails, ties, fastenings, switches and frogs, bumpers and other track materials, signals and installed communications equipment, industrial drill tracks and spur tracks, railroad crossing signs, which belong to Donor, and are located as of the date of this Donative Bill of Sale, on that certain real property in the City of Tempe, County of Maricopa, State of Arizona, which is described on Schedule 1 attached hereto and made a part hereof.

DONOR, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE DONEE IS ACQUIRING THE PERSONAL PROPERTY DESCRIBED ABOVE IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS.

This Donative Bill of Sale is given pursuant to the terms and conditions of that certain Agreement dated _____, 2003, between the parties, which terms and conditions are incorporated herein by reference.

IN WITNESS WHEREOF, the Donor and Donee have each duly executed this instrument as of the _____ day of _____, 2003.

DONOR:
UNION PACIFIC RAILROAD COMPANY

By: _____
Title:

DONEE:
CITY OF TEMPE, a municipal corporation

By: _____
Title:

EXHIBIT B

DONATIVE QUIT CLAIM DEED

(Creamery Branch)

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

SPACE ABOVE FOR RECORDER'S USE ONLY

This instrument is exempt from Affidavit
and Filing Fees (ARS Sec. 42-1614A2)

DONATIVE QUIT CLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation), Donor, does hereby REMISE, RELEASE, DONATE and forever QUIT CLAIM unto the CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law, Donee, whose mailing address is P.O. Box 5002, Tempe, Arizona 85280, and unto its successors and assigns forever, all of Donor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in the City of Tempe, Maricopa County, State of Arizona, as more particularly described in **Exhibit A**, hereto attached and hereby made a part hereof.

Donee acknowledges that the fair market value of the Property will be established by MAI appraisal, and that the Property is being donated to Donee by Donor as a charitable contribution in the amount set by said appraisal. Upon request of Donor, Donee agrees to execute and furnish Internal Revenue Service Form 8283 acknowledging receipt of the Property as a charitable donation.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging: TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Donee and unto its successors and assigns.

This Deed is entered into in accordance with and subject to the National Trails System Act, 16 U.S.C. §1247(d), and the terms and conditions of the Decision and Notice of Interim Trail Use or Abandonment with respect to the portion of the Property subject thereto, as set forth in Surface Transportation Board ("STB") Docket No. AB-33 (Sub. No. 210X) ("Trails Use Decision"). If rail service on the portion of the Property subject to the Trails Use Decision is reactivated by Donor pursuant to the provisions of the National Trails System Act, then Donor shall repurchase that portion of the Property for the then-current fair market value of such portion of the Property and all improvements thereon as determined by appraisal. Donee has an unfettered right to petition the STB to cease railbanking on the Property and Donor shall have no right to oppose such petition.

IN WITNESS WHEREOF, the Donor has caused this deed to be duly executed as of the _____ day of _____, 2003.

DONOR:

Attest:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

Assistant Secretary

By: _____
Title: _____

(SEAL)

The undersigned Donee accepts this Deed subject to the terms, conditions and covenants set forth heretofore.

Dated this _____ day of _____, 2003.

DONEE:

CITY OF TEMPE, a municipal corporation
of the State of Arizona

By: _____

Its: _____

EXHIBIT "A" TO EXHIBIT B

**UNION PACIFIC RAILROAD COMPANY
Tempe, Maricopa County, Arizona**

(Creamery Branch)

All that property in the City of Tempe, Maricopa County, Arizona, more particularly described as follows, it being the intent of the Grantor to convey all of its right title and interest in and to (i) the right of way known as the "Creamery Branch" from Railroad Mile Post 914.3 to Railroad Mile Post 916.4, and (ii) the industrial spur that runs from approximately Mile Post 915.0 of the Creamery Branch to the former Hayden Flour Mills:

PARCEL NO. 1:

INTENTIONALLY DELETED

PARCEL NO. 2:

That portion of Block 64, TEMPE, according to Book 2 of Maps, page 26, described as follows:

Beginning at a point on the North line of said Block 64, being 299 feet West of the Northeast corner of said Block 64; thence West along the North line of said Block 64, 8 feet; thence South, perpendicular to the North line of said Block 64, 138 feet; thence East, parallel to the North line of said Block 64, 8 feet; thence North, 138 feet to the Point of Beginning.

(Book 38 of Deeds, page 326)

PARCEL NO. 3:

That portion of the following described property lying within the Southwest quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

A strip of land, 100 feet wide, extending over and across the Northeast quarter of the Southwest quarter, and the Southeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said strip of land beginning at the East line of said Northeast quarter of the Southwest quarter of Section 15 and extending along and adjacent to the East side of the right of way of the Hayden Mills Ditch or canal as it existed on May 3, 1895, said 100 foot wide strip being measured at right angles to said ditch or canal, and said strip extending in a Northwesterly direction along said right of way of said canal to a point South of the East line of Block 67, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona;

Thence Northerly and East of said Block 67, across the Channel of the Salt River and across the Southeast quarter of the Northwest quarter of said Section 15;

Except any portion conveyed to Hayden Flour Mills, an Arizona corporation in Deeds recorded in Docket 604, page 167 and Docket 710, page 437; and

Except any portion conveyed to the City of Tempe, a municipal corporation in Deed recorded December 27, 1991 in Recording No. 91-610321

(Book 58 of Deeds, page 212)

PARCEL NO. 4:

That part of the Northeast quarter of the Southwest quarter of Section 15, Township North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which lies between the Hayden Canal, as of November 16, 1895, on the South, and on the North by a line 7.5 feet North of and parallel to the center line of the Phoenix Tempe and Mesa Railroad as now located (November 16, 1895) over and across said Southwest quarter. Said Northerly line is more particularly located as follows:

A point in said Northerly line is 448 feet East of the Southeast corner of Block 56, KINGSBURY TRACT, measured along the North line of 5th Street and its production Easterly. This point is also 140 feet North 81 degrees 38 minutes West from a stone indicating the Southeast corner of the Northeast quarter of the Southwest quarter of said Section 15. From this point the line extends Northwesterly 548 feet on a course that makes an angle to the right of 32 degrees 45 minutes with the North line of Fifth Street;

Thence 220 feet on a line curving to left, with a radius of 1153 and 8/10 feet;

Thence on a line tangent to the curve to its intersection with the Hayden Canal; said Northerly boundary line also extends Eastward from initial point on a curved line to the left with a radius of 708 and 7/10 feet parallel to the center line of the railroad to its intersection with the Hayden Canal;

Except any portion conveyed to the City of Tempe, a municipal corporation in Deed recorded December 27, 1991 in Recording No. 91-610321.

(Book 2 of Agreements, page 218)

PARCEL NO. 5:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, being 33 feet on each side of the center line of the railroad track of The Phoenix and Eastern Railroad Company, as located on October 13, 1902 across, over and through the East side of Block 67, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona as set forth in Book 58 of Deeds, page 383.

Except any portion conveyed to Hayden Flour Mills, an Arizona corporation in Deed recorded in Docket 604, page 167.

PARCEL NO. 6:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over that part of the Northeast quarter of the Southwest quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which is bounded on the West by the Hayden Mill Tract, and on the South by the Northerly right of way line of the Hayden Canal, and on the East by the North-South midsection line of said Section 15, and on the North by a line which is drawn 40 feet Northerly from and parallel to the centerline of the Phoenix and Eastern Railroad as of December 6, 1902 over and across said subdivision and as set forth in Book 59 of Deeds, page 171;

Except that portion lying between said boundaries and conveyed to the Santa Fe, Prescott and Phoenix Railway Company in Deed recorded in Book 39 of Deeds, page 8, records of Maricopa County, Arizona;

And Except any portion conveyed to Hayden Flour Mills, an Arizona corporation in Deeds recorded in Docket 604, page 167 and in Docket 710, page 437;

And Except any portion conveyed to the City of Tempe, a municipal corporation in Deed recorded December 27, 1991 in Recording No. 91-610321.

(Book 59 of Deeds, page 171)

PARCEL NO. 7:

INTENTIONALLY DELETED

PARCEL NO. 8:

Commencing at a point 8 feet East of the Northwest corner of Block 64, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona;

Thence East 17 feet, along the South boundary line of First Street; thence South 147.5 feet; thence West 17 feet; thence North 147.5 feet to the Point of Beginning.

(Book 78 of Deeds, page 96)

PARCEL NO. 9:

Commencing at a point 864 feet West from a point 20 feet North of the Northeast corner of the Hayden House, said point being on the South boundary line of First Street, 157 feet West of the

Northeast corner of Block 64, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona;

Thence South 147.5 feet;

Thence West 150 feet;

Thence North 147.5 feet;

Thence East 150 feet to the Point of Beginning;

Except any portion deeded prior to January 14, 1910 to the Maricopa and Phoenix Railroad Company and/or The Maricopa and Phoenix and Salt River Valley Railroad Company.

(Book 87 of Deeds, page 645)

PARCEL NO. 10:

An easement for railroad, transportation and communication purposes as set forth in Recording No. 87-741492 over the following described property:

BEGINNING at the Southwest corner of said Block 64;

Thence North 00 degrees 09 minutes 45 seconds East along the Westerly line of said Block 64 and also the Westerly line of said Lot 12, a distance of 74.10 feet to a point in line concentric with and distant 15.00 feet Easterly, measured radially, from the center line of Southern Pacific Transportation Company's Creamery Spur Track;

Thence Southerly along said concentric line on a curve to the left having radius of 558.14 feet and a central angle of 7 degrees 47 minutes 37 seconds (tangent to said curve at last mentioned point bears South 8 degrees 31 minutes 16 seconds East) an arc distance of 75.92 feet to a point in the South line of said Block 64;

Thence West along said South line and also the South line of said Lot 12, a distance of 16.51 feet to the POINT OF BEGINNING.

PARCEL NO. 11:

An easement for construction, maintenance and operation of a spur track as set forth in Recording No. 85-388968 over the following described property:

A strip of land 30 feet in width over a portion of Block 63, TOWN OF TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona, lying equally 15.0 feet on each side of the following described line:

BEGINNING at the point of intersection of the Northerly line of said Block 63, with the existing centerline of Southern Pacific Transportation company's Creamery Spur Track, said point being distant East along said Northerly line 25.58 feet from the Northwest corner of said Block 63;

Thence Southeasterly along said center line on a curve to the left having a radius of 573.14 feet and a central angle of 37 degrees 44 minutes 32 seconds (tangent to said curve at said point of beginning bears South 23 degrees 14 minutes 41 seconds East) an arc distance of 377.54 feet to a point in the Easterly line of said Block 63 that is distant North 00 degrees 09 minutes 45 seconds East 24.98 feet from the Southeast corner of said Block 63;

The said lines of the above described 30 foot wide strip of land terminate in said Northerly and Easterly lines of said Block 63.

PARCEL NO. 12:

An easement for construction, maintenance and operation of a spur track as set forth in Recording No. 88-476763 over the following described property:

A strip of land 30 feet in width over a portion of Block 63, TOWN OF TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona, lying equally 15.0 feet on each side of the following described line:

BEGINNING at the point of intersection of the Northerly line of said Block 63, with the existing centerline of Southern Pacific Transportation company's Creamery Spur Track, said point being distant East along said Northerly line 25.58 feet from the Northwest corner of said Block 63;

Thence Southeasterly along said center line on a curve to the left having a radius of 573.14 feet and a central angle of 37 degrees 44 minutes 32 seconds (tangent to said curve at said point of beginning bears South 23 degrees 14 minutes 41 seconds East) an arc distance of 377.54 feet to a point in the Easterly line of said Block 63 that is distant North 00 degrees 09 minutes 45 seconds East 24.98 feet from the Southeast corner of said Block 63;

The said lines of the above described 30 foot wide strip of land terminate in said Northerly and Easterly lines of said Block 63.

PARCEL NO. 13:

Right of way for railroad purposes only over the following described property:

BEGINNING at a point on the section line between Sections 22 and 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, 337.5 feet South of the Northwest corner of said Section 23; thence South 76 degrees 5 minutes East, 29 chains and 43 links;

Thence South 83 degrees 30 minutes East, 11 chains and 50 links, along the center line of a fence, the same being the North line of the county road, to a point where it intersects the half section line running North and South through the Center of said Section 23;

Thence North on said half section line, 33 feet;

Thence Westerly on a line parallel to the said South boundary line, and distant 33 feet therefrom, to an intersection with the West line of said Section 23;

Thence South along said last named section line to the Point of Beginning.

(Book 41 of Deeds, page 255)

PARCEL NO 14:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures across, over and through the following described premises:

A subdivision of the Southeast quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

The triangle included in the above parcel of land does not exceed .03 of an acre from the Southwest corner. That is to say that the triangle cuts off from the side tracts by said right of way will not exceed 3/10 of an acre as indicated by the blueprint shown by the right of way agent.

(Book 59 of Deeds page 152)

PARCEL NO. 15:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the tract of Phoenix and Eastern Railroad Company, December 20, 1902 in the Southeast quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona and also in Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, the Northeast quarter of the Southwest quarter of said Section 23, Book 59 of Deeds, page 156;

PARCEL NO. 16:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land being on the Southerly side of the centerline of the railroad track of The Phoenix and Eastern Railroad Company, as located on October 11, 1902, the premises described as being a triangular piece of land beginning at the Northeast corner of Lot 96, Block 11, East Tempe, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona, and running Southerly along the Easterly line of said Lot 96, 25 feet;

Thence in a northwesterly direction 90 feet to a point on the Northerly line of said Lot 96;

Thence back to the Point of Beginning;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

(Book 58 of Deeds, page 393)

PARCEL NO. 17:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 35 feet wide, being 17.5 feet on each side of the centerline of the existing railroad tracks of The Phoenix and Eastern Railroad Company, as of October 13, 1902, Lot 97, Block 11, EAST TEMPE, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona recorded in Book 58 of Deeds, page 584;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

PARCEL NO. 18:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures across, over and through a triangular piece of land in the Northwest quarter of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, the boundary lines of which are as follows:

The West line begins at a stone marking the Southwest corner of said Northwest quarter of the Southeast quarter of Section 15; thence due North 126 feet more or less; The South line begins at the same stone and extends East 280 feet, more or less; The Northeasterly line runs to connect the ends of the lines previously described. It being understood that said triangle contains all that part of said Northwest quarter of the Southeast quarter of Section 15, lying South of a line lying 40 feet North of and parallel to the now located line - (December 29, 1902) - of the Phoenix and Eastern Railroad Company, recorded in Book 59 of Deeds, page 173;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

PARCEL NO. 19:

A strip of land 30.00 feet wide, situated in the South half of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona lying equally 15.00 feet on each side of the following described center line:

Beginning at the intersection of the Northerly line of said South half of the Southeast quarter of Section 15 with the existing center line of Southern Pacific Transportation Company's spur track (former main track, Creamery Branch), said intersection being distant 176.95 feet Easterly, along said Northerly line, from the

Northwest corner of said South half as described in Docket 2416, pages 191-192, Records of Maricopa County, Arizona;

Thence South 65 degrees 38 minutes 00 seconds East, along said existing center line, 144.44 feet to a point;

Thence Southeasterly, on a curve to the right having a radius of 1527.96 feet (tangent to said curve at last mentioned point is last described course), through a central angle of 22 degrees 02 minutes 00 seconds, an arc distance of 587.58 feet to a line that is parallel with and distant 37.5 feet Northeasterly, measured at right angles, from the center line of Stadium Drive;

Thence South 43 degrees 36 minutes 00 seconds East, along said parallel line, 381.16 feet to a point;

Thence Southeasterly, on a curve to the left having a radius of 521.07 feet (tangent to last said curve at last mentioned point is last described course), through a central angle of 35 degrees 53 minutes 00 seconds, an arc distance of 326.34 feet to a point;

Thence South 79 degrees 29 minutes 00 seconds East, tangent to last said curve at last mentioned point, 102.48 feet to a point hereinafter referred to as Point "A";

Thence Southeasterly, on a curve to the right having a radius of 521.07 feet (tangent to last said curve at last mentioned point is last described course), through a central angle of 25 degrees 27 minutes 20 seconds, an arc distance of 231.50 feet to a point on said existing center line of said Company's spur track, hereinafter referred to as Point "B".

The sidelines of said 30 foot wide strip of land terminate in a radial line bearing North 35 degrees 58 minutes 20 seconds East passing through said point "B" and in said Northerly line of said South half of the Southeast quarter of Section 15;

Except that portion thereof lying Northeasterly of the Southwesterly line of the land described second in Deed dated February 10, 1904 from Frank M. Murphy et ux to Phoenix and Eastern Railroad Company, recorded March 5, 1904 in Book 65 of Deeds, pages 376, records of Maricopa County;

And Except that portion included within the land described in deeds to Phoenix and Eastern Railroad Company dated October 11, 1902 from Serapio Obregon et ux, recorded October 13, 1902 in Book 58, page 393 and dated October 13, 1902 from D.A. Tyrrell et ux, recorded November 15, 1902 in Book 58, page 584, both in records of said county;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

(Recording No. 95-614194)

PARCEL NO. 20:

That portion of Lot 92, Block 12, TEMPE, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona, lying Southerly of the line described as follows:

Beginning at the intersection of the Northerly line of said South half of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona with the existing center line of Southern Pacific Transportation Company's spur track (formerly main track of said Company's Creamery Branch), distant Easterly 176.95 feet along said Northerly line from the Northwest corner of said South half as described in Docket 2416, pages 191 and 192, records of Maricopa County, Arizona;

Thence continuing Easterly along said Northerly line 60.6 feet, to the True Point of Beginning;

Thence South 65 degrees 38 minutes East 189.0 feet;

Thence South 54 degrees 50 minutes East 130.0 feet to a point in the South line of said Lot 92;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

(Recording No. 95-614195)

PARCEL NO 21:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the of Phoenix and Eastern Railroad company, October, 6, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 58 of Deeds, page 413.

PARCEL NO. 22:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 2, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 145.

PARCEL NO. 23:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 33 feet wide on the South side of the centerline of the Phoenix and Eastern Railroad Company, October 3, 1902 in the Northwest quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 147.

PARCEL NO. 24:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 6, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 149.

PARCEL NO. 25:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 6, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 150.

PARCEL NO. 26:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, November 7, 1902 in the East half of the Southwest quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 154.

PARCEL NO. 27:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 11, 1902 in the South half of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 175.

PARCEL NO. 28:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide as located and extending 150 feet, more or less, in a Northeasterly direction commencing at the Northeast corner of a Tract of land belonging to A. CELAYA in the Northwest quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, Phoenix and Eastern Railroad Company, 1 20, 1903 in Book 59 of Deeds, page 298.

PARCEL NO. 29:

A portion of the land described in Deed dated December 6, 1902 from Bolton Company, a California corporation, recorded in Book 59 of Deeds, page 152, and in Deed dated December

20,1902 from Charles Corbell as Administrator of the Estate of Ellen Corbell, deceased, recorded in Book 59 of Deeds, page 157, lying within and being a portion of a strip of land 66 feet wide, 33 feet on either side of the centerline described as follows:

Beginning at the Point of intersection of the West line of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, with the original located center line of Southern Pacific Company's former Creamery Branch main tract, now removed (formerly Phoenix and Eastern Railroad Company's track);

Thence Southeasterly along said original located centerline, being also the centerline of track referred to in the above mentioned Deeds, 2650 feet, more or less to a point in a line parallel with and distant 50 feet Northerly, measured at right angles, from the South line of the Northwest quarter of said Section 23, said parallel line being the Northerly line of State Highway Right of Way (U.S. Routes 60-70-80-89) The sidelines of the above described 66 foot wide strip of land terminate in said West line of the Northwest quarter of said Section 23 and in said parallel line.

(Docket 3003, page 226)

PARCEL NO. 30:

An easement for railroad purposes and for transportation purposes as set forth in document recorded December 28, 1956 in Docket 2064, page 300 over the following described property:

That portion of the Northeast quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as follows:

BEGINNING at a point in a line dividing land of ARDEN FARMS COMPANY and land of MUSKINGAM SUPERLITE REALTY, INC., distant South 00 degrees 39 minutes 45 seconds West along said dividing line and the prolongation thereof, 582.59 feet from the North line of said Section 23 and also distant South 56 degrees 20 minutes 33 seconds East, 1070.35 feet from the Northwest corner of said Northeast quarter;

Thence Northeasterly and Northerly along a curve to the left, having a radius of 372.24 feet (tangent to said curve at last said point of beginning bears North 84 degrees 05 minutes 46 seconds East and chord of curve bears North 42 degrees 22 minutes 46 seconds East, 495.41 feet) and arc distance of 542.05 feet to a point;

Thence North 00 degrees 39 minutes 45 seconds East, tangent to said curve at last mentioned point 93.74 feet to a point in the Southerly line of the parcel of land described in deed dated August 27, 1895 from J.H. GUYER to PHOENIX TEMPE AND MESA RAILWAY COMPANY, recorded September 7, 1895 in Book 37 of Deeds at page 533, records of Maricopa County;

Thence Northeasterly along said Southerly line, 24.41 feet;

Thence South 00 degrees 39 minutes 45 seconds West, 107.74 feet to a point;

Thence Southerly and Southwesterly along a curve to the right, having a radius of 392.24 feet, (tangent to said curve at last mentioned point is last described course and chord of said curve bears South 39 degrees 06 minutes 21 seconds West, 487.74 feet), and arc distance of 526.35 feet;

Thence South 12 degrees 27 minutes 04 seconds East, 13.00 feet;

Thence South 89 degrees 49 minutes 15 seconds West, 49.38 feet to a point in said dividing line of land of ARDEN FARMS COMPANY and land of MUSKINGUM SUPERLITE REALTY, INC.;

Thence North 00 degrees 39 minutes 45 seconds East along said dividing line, 25.6 feet to the POINT OF BEGINNING.

PARCEL NO. 31:

An easement for railroad purposes and for transportation purposes as set forth in document recorded December 28, 1956 in Docket 2064, page 304 over and upon the following described property:

That portion of the Northeast quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, as follows:

BEGINNING at a point in the West line of the Northeast quarter of said Section 23, distant South 00 degrees 36 minutes 10 seconds West, 860.32 feet from the Northwest corner of said Northeast quarter of Section 23;

Thence South 83 degrees 30 minutes East, 37.48 feet to a point;

Thence Easterly along a curve to the left, having a radius of 683.06 feet, (tangent to said curve at the last mentioned point is last described course and chord of said curve bears North 86 degrees 35 minutes 45 seconds East, 234.97 feet), an arc distance of 236.15 feet to a point of compound curve;

Thence continuing Easterly and Northeasterly along a curve to the left, having a radius of 725.01 feet, (chord of said curve bears North 67 degrees 51 minutes 52.5 seconds East, 222.51 feet), an arc distance of 223.29 feet to a point;

Thence North 59 degrees 02 minutes 15 seconds East, tangent to said curve at last mentioned point, 217.07 feet to a point;

Thence Northeasterly along a curve to the right, having a radius of 392.24 feet,(tangent to said curve at the last mentioned point is last described course and chord of said curve bears North 70 degrees 34 minutes 26.5 seconds East, 156.89 feet), an arc distance of 157.96 feet;

Thence North 83 degrees 52 minutes 20 seconds East, 80.66 feet;

Thence North 84 degrees 05 minutes 46 seconds East, 7.8 feet to a point in a line dividing land of ARDEN FARMS COMPANY and land of SUPERLITE BUILDERS SUPPLY, said point being distant South 00 degrees 39 minutes 45 seconds West along said dividing line and the prolongation thereof, 582.59 feet from the North line of said Section 23 and also distant South 56 degrees 20 minutes 33 seconds East, 1070.35 feet from the Northwest corner of said Northeast quarter;

Thence South 00 degrees 39 minutes 45 seconds West along said dividing line, 25.6 feet;

Thence South 89 degrees 49 minutes 15 seconds West, 34.98 feet to a point;

Thence Southwesterly along a curve to the left, having a radius of 372.24 feet, (tangent to said curve at the last mentioned point is the last described course and chord of said curve bears South 74 degrees 25 minutes 45 seconds West, 197.60 feet), an arc distance of 199.99 feet;

Thence South 59 degrees 02 minutes 15 seconds West, tangent to said curve at the last mentioned point, 127.19 feet to a point;

Thence Easterly along a curve to the right, having a radius of 347.34 feet, (chord of said curve bears North 77 degrees 23 minutes 15 seconds East, 108.67 feet), an arc distance of 109.12 feet to a point;

Thence North 86 degrees 23 minutes 15 seconds East, tangent to said curve at last mentioned point, 79.00 feet;

Thence South 03 degrees 36 minutes 45 seconds East, 18.5 feet;

Thence South 86 degrees 23 minutes 15 seconds West, 79.00 feet to a point;

Thence Westerly along a curve to the left, having a radius of 328.84 feet, (tangent to said curve at the last mentioned point is the last described course and chord of said curve bears South 76 degrees 47 minutes 25 seconds West, 109.65 feet), an arc distance of 110.16 feet to a point of compound curve;

Thence continuing Westerly and Southwesterly along a curve to the left having a radius of 584.64 feet, (chord of said curve bears South 63 degrees 06 minutes 55 seconds West, 80.30 feet), an arc distance of 80.37 feet to a point of reverse curve;

Thence Southwesterly and Westerly along a curve to the right, having a radius of

756.51 feet, (chord of said curve bears South 67 degrees 51 minutes 52.5 seconds West, 232.18 feet), an arc distance of 233.11 feet to a point of compound curve;

Thence continuing Westerly along a curve to the right, having a radius of 714.56 feet, (chord of said curve bears South 86 degrees 35 minutes 45 seconds, 245.81 feet), an arc distance of 247.03 feet to a point;

Thence North 83 degrees 30 minutes West, tangent to said curve at last mentioned point, 34.23 feet to a point in the said West line of the Northeast quarter of said Section 23;

Thence North 00 degrees 36 minutes 10 seconds East, along said West line, 31.66 feet to the POINT OF BEGINNING.

PARCEL NO. 32:

Lots 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 63, TOWN OF TEMPE, a subdivision recorded in Book 2 of Maps, page 26, records of Maricopa County, Arizona.

PARCEL NO. 33:

Lots 16, 17, 18, 19 and 20, Block 63, TOWN OF TEMPE, a subdivision recorded in Book 2 of Maps, page 26, records of Maricopa County, Arizona.

PARCEL NO. 34:

All that portion of a road formerly used as a County Road lying along the South line of said Section 15 and within said Section 15 between the East line of said Section 15 and the Preston and McKinney Ditch;

Also A strip of land 50 feet in width extended from the South line of said Section 15 along the East side of said Preston and McKinney Ditch to the North boundary line of Lot 100 and 104 in Block 13, of THE TOWN OF TEMPE, according to Book 1 of Maps, page 58, the said strip of land including the West 50 feet of Lot 98 and 103 in Block 14 and the West 50 feet of Lots 100 and 104 in Block 13 in the TOWN OF TEMPE in Book 1 of Maps, page 58; In the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian in the County of Maricopa, Arizona;

(Book 65 of Deeds, page 467)

PARCEL NO. 35:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over the Northeast quarter of the Northeast quarter of Section 22, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as of October 2, 1902 in Book 59 of Deeds page 142 and Book 59 of Deeds, page 143 and further reserved in Docket 9858, page 365.

PARCEL NO. 36:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 33 feet wide on the Southerly side of the centerline of the railroad track of the P & ERR CO., as located on December 1, 1902 across, over and through the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 22, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as set forth in document in Book 59 of Deeds, page 50.

PARCEL NO. 37:

INTENTIONALLY DELETED

PARCEL NO. 38:

Right of way over a strip of land 50 feet wide, 25 feet on each side of the centerline of the railroad track of the Maricopa and Phoenix Railway Company, as located on June 6, 1895, said centerline described as follows:

BEGINNING at a point 12 feet East of the Northwest corner of Lot 11 in Block 63;

Thence on a 10 degrees curve to the left Southerly through said Block 63 to a point on the East side of Lot 22, Block 63, 7 feet North of the Southeast corner of said Block 63.

PARCEL NO. 39:

INTENTIONALLY DELETED

PARCEL NO. 40:

A strip of land 30.00 feet wide, situated in the South half of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, County of Maricopa, State of Arizona, lying equally 15.00 feet on each side of the following described center line:

BEGINNING at the intersection of the Northerly line of said South half of the Southeast quarter of Section 15 with the existing center line of Southern Pacific Transportation Company's spur track (former main track, Creamery Branch), said intersection being distant 176.95 feet Easterly, along said Northerly line, from the Northwest corner of said South half as described in Docket 2416, pages 191-192, in the Office of the Recorder of said County; thence South 65 degrees 38 minutes 00 seconds East, along said existing center line, 144.44 feet to a point; thence Southeasterly, on a curve to the right having a radius of 1527.96 feet (tangent to said curve at last mentioned point is last described course), through a central angle of 22 degrees 02 minutes 00 seconds, an arc distance of 587.58 feet to a line that is parallel with and distant 37.5 feet Northeasterly, measured

at right angles, from the center line of Stadium Drive; thence South 43 degrees 36 minutes 00 seconds East, along said parallel line, 381.16 feet to a point; thence Southeasterly, on a curve to the left having a radius of 521.07 feet (tangent to last said curve at last mentioned point is last described course), through a central angle of 35 degrees 53 minutes 00 seconds, an arc distance of 326.34 feet to a point; thence South 79 degrees 29 minutes 00 seconds East, tangent to last said curve at last mentioned point, 102.48 feet to a point hereinafter referred to as Point "A"; thence Southeasterly, on a curve to the right having a radius of 521.07 feet (tangent to last said curve at last mentioned point is last described course), through a central angle of 25 degrees 27 minutes 20 seconds, an arc distance of 231.50 feet to a point on said existing center line of said Company's spur track, hereinafter referred to as Point "B"; The side lines of said 30 foot wide strip of land terminate in a radial line bearing North 35 degrees 58 minutes 20 seconds East passing through said point "B" and in said Northerly line of said South half of the Southeast quarter of Section 15;

EXCEPTING from the above described strip of land that portion thereof lying Northeasterly of the Southwesterly line of the land described in Book 65 of Deeds, page 376, Records of said County;

ALSO EXCEPTING therefrom that portion thereof included within the land described in Book 58 of Deeds, page 393 and in Book 58 of Deeds, page 584, both in Records of said County;

RESERVING from the above described strip of land and easement for street and utility purposes, together with the right to dedicate said easement to applicable government body, over, upon and along that portion thereof included within a strip of land 70 feet wide lying Westerly of and contiguous to a line bearing North 09 degrees 57 minutes 24 seconds East passing through above mentioned Point "A".

(Recording No. 95-614194)

PARCEL NO. 41:

That portion of the Northeast quarter of the Northeast quarter of Section 22, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING on the South line of the County Road, 33 feet South of the Section line, between Sections 15 and 22 and distant 749 feet West from the Section line between Sections 22 and 23; thence East parallel to said Section line, a distance of 155 feet to a point in South border of the Hayden Canal; thence following the South border of said Hayden Canal in a Southeasterly direction 525 feet to a point on said border the opposite Southeast corner of bridge and 2 feet South thereof in line with North line of county road running Easterly to Mesa City; thence Northwesterly in a curve Northward, having a radius of 872 feet following the base of the road bed of the PHOENIX, TEMPE & MESA CITY RAILWAY, a distance of 250 feet; thence in a straight line Northwesterly following the base of said Railway grade, a distance of 415 feet to the POINT OF BEGINNING.

(Book 39 of Deeds, page 456 and corrected in Book 40 of Deeds, page 10)

PARCEL NO. 42:

That 20 foot wide strip of land as excepted in the Deed dated September 19, 1956 from Southern Pacific Company to Muskingum Superlite Realty, Inc., more particularly described in said deed as follows:

COMMENCING at a point on the North Section line of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, 902 feet East of the Northwest corner of the Northeast quarter of Section 23; thence East along said Section line 500 feet; thence in a Southwesterly direction to a point 350 feet South of the POINT OF BEGINNING; thence North 350 feet to the POINT OF BEGINNING lying in Maricopa County, Arizona.

EXCEPTING there from, a strip of land, 20 feet in width, lying equally 10.0 feet on each side of the following described center line:

BEGINNING at a point in the north line of the above described parcel of land, distant thereon easterly, 339.67 feet from the northwest corner of said parcel a of land; thence South 0°39'45" West, parallel with and distant 339.67 feet easterly, measured at right angles, from the westerly line of said parcel of land, 112.22 feet to a point in the southerly line of said parcel of land.

(Book 37 of Deeds, page 533)

PARCEL NO. 43:

Right of way to construct, maintain and operate a Railroad together with all necessary spurs, sidetracks and structures usually appurtenant thereto within the limits of a strip of land 25 feet wide being on the North side of the centerline of the Railroad tracks as of November 4, 1902 - the parcel described as follows:

BEGINNING at the Southwest corner of Lot 94, Block 12, EAST TEMPE, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona; thence along the alley in an Easterly direction 200 feet; thence North 25 feet; thence West 200 feet; thence South 25 feet to the POINT OF BEGINNING.

(Book 59 of Deeds, page 58)

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA
September 26, 2003
161874b.leg

EXHIBIT C

PROPERTY MATERIALS

1. Letter dated October 21, 2002 from Gregg A. Larsen, Manager Real Estate, Union Pacific Railroad Company, to Kirk E. Trost, Hyde, Miller, Owen & Trost, entitled "Proposed Donation of the Creamery Branch to the City of Tempe Folder 1618-74", and all valuation maps, property schedules, vesting deeds, easements, licenses and leases, enclosed therewith.
2. Electronic Message dated August 5, 2003 from Gregg A. Larsen, Manager Real Estate, Union Pacific Railroad Company, to Kirk E. Trost, Hyde, Miller, Owen & Trost, entitled "Donation of Creamery Branch to City of Tempe Folder 1618-74 Removal of Appurtenances" listing the equipment that will be removed by Signal and Operations prior to Closing.
3. Electronic Message dated August 7, 2003 from Gregg A. Larsen, Manager Real Estate, Union Pacific Railroad Company, to Larry Schmalz, City of Tempe entitled "Rent Roll Creamery Branch Donation Folder 1618-74" listing the rental information of two (2) existing leases on the Creamery Branch.

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), acting by and through its duly authorized officers, has ASSIGNED AND TRANSFERRED, and by these presents does ASSIGN AND TRANSFER unto the CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law ("Assignee"), all of Assignor's right, title and interest in and to the tenant leases and licenses ("Leases and Licenses") now or hereafter affecting the real property (the "Property") described on **Exhibit A**, which Leases and Licenses, and all amendments thereto, are described on **Exhibit B**, together with all security deposits and other deposits held by Assignor under the terms of said Leases and Licenses.

TO HAVE AND TO HOLD the Leases and Licenses unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Leases and Licenses.

Assignee agrees to perform all of the obligations of Assignor pursuant to the Leases and Licenses accruing after the date hereof.

This Assignment and Assumption Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Assignment and Assumption Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in the county in which the Property is located.

All exhibits attached to this Agreement are incorporated herein for all purposes.

This Assignment and Assumption Agreement shall inure to and be binding upon the parties, their successors and assigns.

Dated the ____ day of _____, 200_.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Title: _____

_____,
a _____

By: _____
Title: _____

EXHIBIT "A" TO EXHIBIT D

Legal Description of Property

All that property in the City of Tempe, Maricopa County, Arizona, more particularly described as follows, it being the intent of the Grantor to convey all of its right title and interest in and to (i) the right of way known as the "Creamery Branch" from Railroad Mile Post 914.3 to Railroad Mile Post 916.4, and (ii) the industrial spur that runs from approximately Mile Post 915.0 of the Creamery Branch to the former Hayden Flour Mills:

PARCEL NO. 1:

INTENTIONALLY DELETED

PARCEL NO. 2:

That portion of Block 64, TEMPE, according to Book 2 of Maps, page 26, described as follows:

Beginning at a point on the North line of said Block 64, being 299 feet West of the Northeast corner of said Block 64; thence West along the North line of said Block 64, 8 feet; thence South, perpendicular to the North line of said Block 64, 138 feet; thence East, parallel to the North line of said Block 64, 8 feet; thence North, 138 feet to the Point of Beginning.

(Book 38 of Deeds, page 326)

PARCEL NO. 3:

That portion of the following described property lying within the Southwest quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

A strip of land, 100 feet wide, extending over and across the Northeast quarter of the Southwest quarter, and the Southeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said strip of land beginning at the East line of said Northeast quarter of the Southwest quarter of Section 15 and extending along and adjacent to the East side of the right of way of the Hayden Mills Ditch or canal as it existed on May 3, 1895, said 100 foot wide strip being measured at right angles to said ditch or canal, and said strip extending in a Northwesterly direction along said right of way of said canal to a point South of the East line of Block 67, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona;

Thence Northerly and East of said Block 67, across the Channel of the Salt River and across the Southeast quarter of the Northwest quarter of said Section 15;

Except any portion conveyed to Hayden Flour Mills, an Arizona corporation in Deeds recorded in Docket 604, page 167 and Docket 710, page 437; and

Except any portion conveyed to the City of Tempe, a municipal corporation in Deed recorded December 27, 1991 in Recording No. 91-610321

(Book 58 of Deeds, page 212)

PARCEL NO. 4:

That part of the Northeast quarter of the Southwest quarter of Section 15, Township North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which lies between the Hayden Canal, as of November 16, 1895, on the South, and on the North by a line 7.5 feet North of and parallel to the center line of the Phoenix Tempe and Mesa Railroad as now located (November 16, 1895) over and across said Southwest quarter. Said Northerly line is more particularly located as follows:

A point in said Northerly line is 448 feet East of the Southeast corner of Block 56, KINGSBURY TRACT, measured along the North line of 5th Street and its production Easterly. This point is also 140 feet North 81 degrees 38 minutes West from a stone indicating the Southeast corner of the Northeast quarter of the Southwest quarter of said Section 15. From this point the line extends Northwesterly 548 feet on a course that makes an angle to the right of 32 degrees 45 minutes with the North line of Fifth Street;

Thence 220 feet on a line curving to left, with a radius of 1153 and 8/10 feet;

Thence on a line tangent to the curve to its intersection with the Hayden Canal; said Northerly boundary line also extends Eastward from initial point on a curved line to the left with a radius of 708 and 7/10 feet parallel to the center line of the railroad to its intersection with the Hayden Canal;

Except any portion conveyed to the City of Tempe, a municipal corporation in Deed recorded December 27, 1991 in Recording No. 91-610321.

(Book 2 of Agreements, page 218)

PARCEL NO. 5:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, being 33 feet on each side of the center line of the railroad track of The Phoenix and Eastern Railroad Company, as located on October 13, 1902 across, over and through the East side of Block 67, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona as set forth in Book 58 of Deeds, page 383.

Except any portion conveyed to Hayden Flour Mills, an Arizona corporation in Deed recorded in Docket 604, page 167.

PARCEL NO. 6:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over that part of the Northeast quarter of the Southwest quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which is bounded on the West by the Hayden Mill Tract, and on the South by the Northerly right of way line of the Hayden Canal, and on the East by the North-South midsection line of said Section 15, and on the North by a line which is drawn 40 feet Northerly from and parallel to the centerline of the Phoenix and Eastern Railroad as of December 6, 1902 over and across said subdivision and as set forth in Book 59 of Deeds, page 171;

Except that portion lying between said boundaries and conveyed to the Santa Fe, Prescott and Phoenix Railway Company in Deed recorded in Book 39 of Deeds, page 8, records of Maricopa County, Arizona;

And Except any portion conveyed to Hayden Flour Mills, an Arizona corporation in Deeds recorded in Docket 604, page 167 and in Docket 710, page 437;

And Except any portion conveyed to the City of Tempe, a municipal corporation in Deed recorded December 27, 1991 in Recording No. 91-610321.

(Book 59 of Deeds, page 171)

PARCEL NO. 7:

INTENTIONALLY DELETED

PARCEL NO. 8:

Commencing at a point 8 feet East of the Northwest corner of Block 64, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona;

Thence East 17 feet, along the South boundary line of First Street; thence South 147.5 feet; thence West 17 feet; thence North 147.5 feet to the Point of Beginning.

(Book 78 of Deeds, page 96)

PARCEL NO. 9:

Commencing at a point 864 feet West from a point 20 feet North of the Northeast corner of the Hayden House, said point being on the South boundary line of First Street, 157 feet West of the Northeast corner of Block 64, TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona;

Thence South 147.5 feet;

Thence West 150 feet;

Thence North 147.5 feet;

Thence East 150 feet to the Point of Beginning;

Except any portion deeded prior to January 14, 1910 to the Maricopa and Phoenix Railroad Company and/or The Maricopa and Phoenix and Salt River Valley Railroad Company.

(Book 87 of Deeds, page 645)

PARCEL NO. 10:

An easement for railroad, transportation and communication purposes as set forth in Recording No. 87-741492 over the following described property:

BEGINNING at the Southwest corner of said Block 64;

Thence North 00 degrees 09 minutes 45 seconds East along the Westerly line of said Block 64 and also the Westerly line of said Lot 12, a distance of 74.10 feet to a point in line concentric with and distant 15.00 feet Easterly, measured radially, from the center line of Southern Pacific Transportation Company's Creamery Spur Track;

Thence Southerly along said concentric line on a curve to the left having radius of 558.14 feet and a central angle of 7 degrees 47 minutes 37 seconds (tangent to said curve at last mentioned point bears South 8 degrees 31 minutes 16 seconds East) an arc distance of 75.92 feet to a point in the South line of said Block 64;

Thence West along said South line and also the South line of said Lot 12, a distance of 16.51 feet to the POINT OF BEGINNING.

PARCEL NO. 11:

An easement for construction, maintenance and operation of a spur track as set forth in Recording No. 85-388968 over the following described property:

A strip of land 30 feet in width over a portion of Block 63, TOWN OF TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona, lying equally 15.0 feet on each side of the following described line:

BEGINNING at the point of intersection of the Northerly line of said Block 63, with the existing centerline of Southern Pacific Transportation company's Creamery Spur Track, said point being distant East along said Northerly line 25.58 feet from the Northwest corner of said Block 63;

Thence Southeasterly along said center line on a curve to the left having a radius of 573.14 feet and a central angle of 37 degrees 44 minutes 32 seconds (tangent to said curve at said point of beginning bears South 23 degrees 14 minutes 41 seconds East) an arc distance of 377.54 feet to a

point in the Easterly line of said Block 63 that is distant North 00 degrees 09 minutes 45 seconds East 24.98 feet from the Southeast corner of said Block 63;

The said lines of the above described 30 foot wide strip of land terminate in said Northerly and Easterly lines of said Block 63.

PARCEL NO. 12:

An easement for construction, maintenance and operation of a spur track as set forth in Recording No. 88-476763 over the following described property:

A strip of land 30 feet in width over a portion of Block 63, TOWN OF TEMPE, according to Book 2 of Maps, page 26, records of Maricopa County, Arizona, lying equally 15.0 feet on each side of the following described line:

BEGINNING at the point of intersection of the Northerly line of said Block 63, with the existing centerline of Southern Pacific Transportation company's Creamery Spur Track, said point being distant East along said Northerly line 25.58 feet from the Northwest corner of said Block 63;

Thence Southeasterly along said center line on a curve to the left having a radius of 573.14 feet and a central angle of 37 degrees 44 minutes 32 seconds (tangent to said curve at said point of beginning bears South 23 degrees 14 minutes 41 seconds East) an arc distance of 377.54 feet to a point in the Easterly line of said Block 63 that is distant North 00 degrees 09 minutes 45 seconds East 24.98 feet from the Southeast corner of said Block 63;

The said lines of the above described 30 foot wide strip of land terminate in said Northerly and Easterly lines of said Block 63.

PARCEL NO. 13:

Right of way for railroad purposes only over the following described property:

BEGINNING at a point on the section line between Sections 22 and 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, 337.5 feet South of the Northwest corner of said Section 23; thence South 76 degrees 5 minutes East, 29 chains and 43 links;

Thence South 83 degrees 30 minutes East, 11 chains and 50 links, along the center line of a fence, the same being the North line of the county road, to a point where it intersects the half section line running North and South through the Center of said Section 23;

Thence North on said half section line, 33 feet;

Thence Westerly on a line parallel to the said South boundary line, and distant 33 feet therefrom, to an intersection with the West line of said Section 23;

Thence South along said last named section line to the Point of Beginning.

(Book 41 of Deeds, page 255)

PARCEL NO 14:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures across, over and through the following described premises:

A subdivision of the Southeast quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

The triangle included in the above parcel of land does not exceed .03 of an acre from the Southwest corner. That is to say that the triangle cuts off from the side tracts by said right of way will not exceed 3/10 of an acre as indicated by the blueprint shown by the right of way agent.

(Book 59 of Deeds page 152)

PARCEL NO. 15:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the tract of Phoenix and Eastern Railroad Company, December 20, 1902 in the Southeast quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona and also in Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, the Northeast quarter of the Southwest quarter of said Section 23, Book 59 of Deeds, page 156;

PARCEL NO. 16:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land being on the Southerly side of the centerline of the railroad track of The Phoenix and Eastern Railroad Company, as located on October 11, 1902, the premises described as being a triangular piece of land beginning at the Northeast corner of Lot 96, Block 11, East Tempe, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona, and running Southerly along the Easterly line of said Lot 96, 25 feet;

Thence in a northwesterly direction 90 feet to a point on the Northerly line of said Lot 96;

Thence back to the Point of Beginning;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

(Book 58 of Deeds, page 393)

PARCEL NO. 17:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 35 feet wide, being 17.5 feet on each side of the centerline of the existing railroad tracks of The Phoenix and Eastern Railroad Company, as of October 13, 1902, Lot 97, Block 11, EAST TEMPE, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona recorded in Book 58 of Deeds, page 584;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

PARCEL NO. 18:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures across, over and through a triangular piece of land in the Northwest quarter of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, the boundary lines of which are as follows:

The West line begins at a stone marking the Southwest corner of said Northwest quarter of the Southeast quarter of Section 15; thence due North 126 feet more or less; The South line begins at the same stone and extends East 280 feet, more or less; The Northeasterly line runs to connect the ends of the lines previously described. It being understood that said triangle contains all that part of said Northwest quarter of the Southeast quarter of Section 15, lying South of a line lying 40 feet North of and parallel to the now located line - (December 29, 1902) - of the Phoenix and Eastern Railroad Company, recorded in Book 59 of Deeds, page 173;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

PARCEL NO. 19:

A strip of land 30.00 feet wide, situated in the South half of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona lying equally 15.00 feet on each side of the following described center line:

Beginning at the intersection of the Northerly line of said South half of the Southeast quarter of Section 15 with the existing center line of Southern Pacific Transportation Company's spur track (former main track, Creamery Branch), said intersection being distant 176.95 feet Easterly, along said Northerly line, from the Northwest corner of said South half as described in Docket 2416, pages 191-192, Records of Maricopa County, Arizona;

Thence South 65 degrees 38 minutes 00 seconds East, along said existing center line, 144.44 feet to a point;

Thence Southeasterly, on a curve to the right having a radius of 1527.96 feet (tangent to said curve at last mentioned point is last described course), through a central angle of 22 degrees 02

minutes 00 seconds, an arc distance of 587.58 feet to a line that is parallel with and distant 37.5 feet Northeasterly, measured at right angles, from the center line of Stadium Drive;

Thence South 43 degrees 36 minutes 00 seconds East, along said parallel line, 381.16 feet to a point;

Thence Southeasterly, on a curve to the left having a radius of 521.07 feet (tangent to last said curve at last mentioned point is last described course), through a central angle of 35 degrees 53 minutes 00 seconds, an arc distance of 326.34 feet to a point;

Thence South 79 degrees 29 minutes 00 seconds East, tangent to last said curve at last mentioned point, 102.48 feet to a point hereinafter referred to as Point "A";

Thence Southeasterly, on a curve to the right having a radius of 521.07 feet (tangent to last said curve at last mentioned point is last described course), through a central angle of 25 degrees 27 minutes 20 seconds, an arc distance of 231.50 feet to a point on said existing center line of said Company's spur track, hereinafter referred to as Point "B".

The sidelines of said 30 foot wide strip of land terminate in a radial line bearing North 35 degrees 58 minutes 20 seconds East passing through said point "B" and in said Northerly line of said South half of the Southeast quarter of Section 15;

Except that portion thereof lying Northeasterly of the Southwesterly line of the land described second in Deed dated February 10, 1904 from Frank M. Murphy et ux to Phoenix and Eastern Railroad Company, recorded March 5, 1904 in Book 65 of Deeds, pages 376, records of Maricopa County;

And Except that portion included within the land described in deeds to Phoenix and Eastern Railroad Company dated October 11, 1902 from Serapio Obregon et ux, recorded October 13, 1902 in Book 58, page 393 and dated October 13, 1902 from D.A. Tyrrell et ux, recorded November 15, 1902 in Book 58, page 584, both in records of said county;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

(Recording No. 95-614194)

PARCEL NO. 20:

That portion of Lot 92, Block 12, TEMPE, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona, lying Southerly of the line described as follows:

Beginning at the intersection of the Northerly line of said South half of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona with the existing center line of Southern Pacific Transportation Company's spur track (formerly main track of said Company's Creamery Branch),

distant Easterly 176.95 feet along said Northerly line from the Northwest corner of said South half as described in Docket 2416, pages 191 and 192, records of Maricopa County, Arizona;

Thence continuing Easterly along said Northerly line 60.6 feet, to the True Point of Beginning;

Thence South 65 degrees 38 minutes East 189.0 feet;

Thence South 54 degrees 50 minutes East 130.0 feet to a point in the South line of said Lot 92;

Except any mine for gold, silver, cinnabar or copper, or any valid mining claim or possession held under the existing laws of Congress.

(Recording No. 95-614195)

PARCEL NO 21:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the of Phoenix and Eastern Railroad company, October, 6, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 58 of Deeds, page 413.

PARCEL NO. 22:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 2, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 145.

PARCEL NO. 23:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 33 feet wide on the South side of the centerline of the Phoenix and Eastern Railroad Company, October 3, 1902 in the Northwest quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 147.

PARCEL NO. 24:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 6, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 149.

PARCEL NO. 25:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 6, 1902 in the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 150.

PARCEL NO. 26:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, November 7, 1902 in the East half of the Southwest quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 154.

PARCEL NO. 27:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide, 33 feet on each side of the centerline of the Phoenix and Eastern Railroad Company, October 11, 1902 in the South half of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, in Book 59 of Deeds, page 175.

PARCEL NO. 28:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 66 feet wide as located and extending 150 feet, more or less, in a Northeasterly direction commencing at the Northeast corner of a Tract of land belonging to A. CELAYA in the Northwest quarter of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, Phoenix and Eastern Railroad Company, 1 20, 1903 in Book 59 of Deeds, page 298.

PARCEL NO. 29:

A portion of the land described in Deed dated December 6, 1902 from Bolton Company, a California corporation, recorded in Book 59 of Deeds, page 152, and in Deed dated December 20, 1902 from Charles Corbell as Administrator of the Estate of Ellen Corbell, deceased, recorded in Book 59 of Deeds, page 157, lying within and being a portion of a strip of land 66 feet wide, 33 feet on either side of the centerline described as follows:

Beginning at the Point of intersection of the West line of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and

Meridian, Maricopa County, Arizona, with the original located center line of Southern Pacific Company's former Creamery Branch main tract, now removed (formerly Phoenix and Eastern Railroad Company's track);

Thence Southeasterly along said original located centerline, being also the centerline of track referred to in the above mentioned Deeds, 2650 feet, more or less to a point in a line parallel with and distant 50 feet Northerly, measured at right angles, from the South line of the Northwest quarter of said Section 23, said parallel line being the Northerly line of State Highway Right of Way (U.S. Routes 60-70-80-89) The sidelines of the above described 66 foot wide strip of land terminate in said West line of the Northwest quarter of said Section 23 and in said parallel line.

(Docket 3003, page 226)

PARCEL NO. 30:

An easement for railroad purposes and for transportation purposes as set forth in document recorded December 28, 1956 in Docket 2064, page 300 over the following described property:

That portion of the Northeast quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as follows:

BEGINNING at a point in a line dividing land of ARDEN FARMS COMPANY and land of MUSKINGAM SUPERLITE REALTY, INC., distant South 00 degrees 39 minutes 45 seconds West along said dividing line and the prolongation thereof, 582.59 feet from the North line of said Section 23 and also distant South 56 degrees 20 minutes 33 seconds East, 1070.35 feet from the Northwest corner of said Northeast quarter;

Thence Northeasterly and Northerly along a curve to the left, having a radius of 372.24 feet (tangent to said curve at last said point of beginning bears North 84 degrees 05 minutes 46 seconds East and chord of curve bears North 42 degrees 22 minutes 46 seconds East, 495.41 feet) and arc distance of 542.05 feet to a point;

Thence North 00 degrees 39 minutes 45 seconds East, tangent to said curve at last mentioned point 93.74 feet to a point in the Southerly line of the parcel of land described in deed dated August 27, 1895 from J.H. GUYER to PHOENIX TEMPE AND MESA RAILWAY COMPANY, recorded September 7, 1895 in Book 37 of Deeds at page 533, records of Maricopa County;

Thence Northeasterly along said Southerly line, 24.41 feet;

Thence South 00 degrees 39 minutes 45 seconds West, 107.74 feet to a point;

Thence Southerly and Southwesterly along a curve to the right, having a radius of

392.24 feet, (tangent to said curve at last mentioned point is last described course and chord of said curve bears South 39 degrees 06 minutes 21 seconds West, 487.74 feet), and arc distance of 526.35 feet;

Thence South 12 degrees 27 minutes 04 seconds East, 13.00 feet;

Thence South 89 degrees 49 minutes 15 seconds West, 49.38 feet to a point in said dividing line of land of ARDEN FARMS COMPANY and land of MUSKINGUM SUPERLITE REALTY, INC.;

Thence North 00 degrees 39 minutes 45 seconds East along said dividing line, 25.6 feet to the POINT OF BEGINNING.

PARCEL NO. 31:

An easement for railroad purposes and for transportation purposes as set forth in document recorded December 28, 1956 in Docket 2064, page 304 over and upon the following described property:

That portion of the Northeast quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, as follows:

BEGINNING at a point in the West line of the Northeast quarter of said Section 23, distant South 00 degrees 36 minutes 10 seconds West, 860.32 feet from the Northwest corner of said Northeast quarter of Section 23;

Thence South 83 degrees 30 minutes East, 37.48 feet to a point;

Thence Easterly along a curve to the left, having a radius of 683.06 feet, (tangent to said curve at the last mentioned point is last described course and chord of said curve bears North 86 degrees 35 minutes 45 seconds East, 234.97 feet), an arc distance of 236.15 feet to a point of compound curve;

Thence continuing Easterly and Northeasterly along a curve to the left, having a radius of 725.01 feet, (chord of said curve bears North 67 degrees 51 minutes 52.5 seconds East, 222.51 feet), an arc distance of 223.29 feet to a point;

Thence North 59 degrees 02 minutes 15 seconds East, tangent to said curve at last mentioned point, 217.07 feet to a point;

Thence Northeasterly along a curve to the right, having a radius of 392.24 feet, (tangent to said curve at the last mentioned point is last described course and chord of said curve bears North 70 degrees 34 minutes 26.5 seconds East, 156.89 feet), an arc distance of 157.96 feet;

Thence North 83 degrees 52 minutes 20 seconds East, 80.66 feet;

Thence North 84 degrees 05 minutes 46 seconds East, 7.8 feet to a point in a line dividing land of ARDEN FARMS COMPANY and land of SUPERLITE BUILDERS SUPPLY, said point being distant South 00 degrees 39 minutes 45 seconds West along said dividing line and the prolongation thereof, 582.59 feet from the North line of said Section 23 and also distant South 56 degrees 20 minutes 33 seconds East, 1070.35 feet from the Northwest corner of said Northeast quarter;

Thence South 00 degrees 39 minutes 45 seconds West along said dividing line, 25.6 feet;

Thence South 89 degrees 49 minutes 15 seconds West, 34.98 feet to a point;

Thence Southwesterly along a curve to the left, having a radius of 372.24 feet, (tangent to said curve at the last mentioned point is the last described course and chord of said curve bears South 74 degrees 25 minutes 45 seconds West, 197.60 feet), an arc distance of 199.99 feet;

Thence South 59 degrees 02 minutes 15 seconds West, tangent to said curve at the last mentioned point, 127.19 feet to a point;

Thence Easterly along a curve to the right, having a radius of 347.34 feet, (chord of said curve bears North 77 degrees 23 minutes 15 seconds East, 108.67 feet), an arc distance of 109.12 feet to a point;

Thence North 86 degrees 23 minutes 15 seconds East, tangent to said curve at last mentioned point, 79.00 feet;

Thence South 03 degrees 36 minutes 45 seconds East, 18.5 feet;

Thence South 86 degrees 23 minutes 15 seconds West, 79.00 feet to a point;

Thence Westerly along a curve to the left, having a radius of 328.84 feet, (tangent to said curve at the last mentioned point is the last described course and chord of said curve bears South 76 degrees 47 minutes 25 seconds West, 109.65 feet), an arc distance of 110.16 feet to a point of compound curve;

Thence continuing Westerly and Southwesterly along a curve to the left having a radius of 584.64 feet, (chord of said curve bears South 63 degrees 06 minutes 55 seconds West, 80.30 feet), an arc distance of 80.37 feet to a point of reverse curve;

Thence Southwesterly and Westerly along a curve to the right, having a radius of 756.51 feet, (chord of said curve bears South 67 degrees 51 minutes 52.5 seconds West, 232.18 feet), an arc distance of 233.11 feet to a point of compound curve;

Thence continuing Westerly along a curve to the right, having a radius of 714.56 feet, (chord of said curve bears South 86 degrees 35 minutes 45 seconds, 245.81 feet), an arc distance of 247.03 feet to a point;

Thence North 83 degrees 30 minutes West, tangent to said curve at last mentioned point, 34.23 feet to a point in the said West line of the Northeast quarter of said Section 23;

Thence North 00 degrees 36 minutes 10 seconds East, along said West line, 31.66 feet to the POINT OF BEGINNING.

PARCEL NO. 32:

Lots 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 63, TOWN OF TEMPE, a subdivision recorded in Book 2 of Maps, page 26, records of Maricopa County, Arizona.

PARCEL NO. 33:

Lots 16, 17, 18, 19 and 20, Block 63, TOWN OF TEMPE, a subdivision recorded in Book 2 of Maps, page 26, records of Maricopa County, Arizona.

PARCEL NO. 34:

All that portion of a road formerly used as a County Road lying along the South line of said Section 15 and within said Section 15 between the East line of said Section 15 and the Preston and McKinney Ditch;

Also A strip of land 50 feet in width extended from the South line of said Section 15 along the East side of said Preston and McKinney Ditch to the North boundary line of Lot 100 and 104 in Block 13, of THE TOWN OF TEMPE, according to Book 1 of Maps, page 58, the said strip of land including the West 50 feet of Lot 98 and 103 in Block 14 and the West 50 feet of Lots 100 and 104 in Block 13 in the TOWN OF TEMPE in Book 1 of Maps, page 58; In the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian in the County of Maricopa, Arizona;

(Book 65 of Deeds, page 467)

PARCEL NO. 35:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over the Northeast quarter of the Northeast quarter of Section 22, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as of October 2, 1902 in Book 59 of Deeds page 142 and Book 59 of Deeds, page 143 and further reserved in Docket 9858, page 365.

PARCEL NO. 36:

Right of way to construct, maintain and operate a railroad and all necessary spurs, sidetracks and structures over a strip of land 33 feet wide on the Southerly side of the centerline of the railroad track of the P & ERR CO., as located on December 1, 1902 across, over and through the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 22, Township 1

North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as set forth in document in Book 59 of Deeds, page 50.

PARCEL NO. 37:

INTENTIONALLY DELETED

PARCEL NO. 38:

Right of way over a strip of land 50 feet wide, 25 feet on each side of the centerline of the railroad track of the Maricopa and Phoenix Railway Company, as located on June 6, 1895, said centerline described as follows:

BEGINNING at a point 12 feet East of the Northwest corner of Lot 11 in Block 63;

Thence on a 10 degrees curve to the left Southerly through said Block 63 to a point on the East side of Lot 22, Block 63, 7 feet North of the Southeast corner of said Block 63.

PARCEL NO. 39:

INTENTIONALLY DELETED

PARCEL NO. 40:

A strip of land 30.00 feet wide, situated in the South half of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, County of Maricopa, State of Arizona, lying equally 15.00 feet on each side of the following described center line:

BEGINNING at the intersection of the Northerly line of said South half of the Southeast quarter of Section 15 with the existing center line of Southern Pacific Transportation Company's spur track (former main track, Creamery Branch), said intersection being distant 176.95 feet Easterly, along said Northerly line, from the Northwest corner of said South half as described in Docket 2416, pages 191-192, in the Office of the Recorder of said County; thence South 65 degrees 38 minutes 00 seconds East, along said existing center line, 144.44 feet to a point; thence Southeasterly, on a curve to the right having a radius of 1527.96 feet (tangent to said curve at last mentioned point is last described course), through a central angle of 22 degrees 02 minutes 00 seconds, an arc distance of 587.58 feet to a line that is parallel with and distant 37.5 feet Northeasterly, measured at right angles, from the center line of Stadium Drive; thence South 43 degrees 36 minutes 00 seconds East, along said parallel line, 381.16 feet to a point; thence Southeasterly, on a curve to the left having a radius of 521.07 feet (tangent to last said curve at last mentioned point is last described course), through a central angle of 35 degrees 53 minutes 00 seconds, an arc distance of 326.34 feet to a point; thence South 79 degrees 29 minutes 00 seconds East, tangent to last said curve at last mentioned point, 102.48 feet to a point hereinafter referred to as Point "A"; thence Southeasterly, on a curve to the right having a radius of 521.07 feet (tangent to last said

curve at last mentioned point is last described course), through a central angle of 25 degrees 27 minutes 20 seconds, an arc distance of 231.50 feet to a point on said existing center line of said Company's spur track, hereinafter referred to as Point "B"; The side lines of said 30 foot wide strip of land terminate in a radial line bearing North 35 degrees 58 minutes 20 seconds East passing through said point "B" and in said Northerly line of said South half of the Southeast quarter of Section 15;

EXCEPTING from the above described strip of land that portion thereof lying Northeasterly of the Southwesterly line of the land described in Book 65 of Deeds, page 376, Records of said County;

ALSO EXCEPTING therefrom that portion thereof included within the land described in Book 58 of Deeds, page 393 and in Book 58 of Deeds, page 584, both in Records of said County;

RESERVING from the above described strip of land and easement for street and utility purposes, together with the right to dedicate said easement to applicable government body, over, upon and along that portion thereof included within a strip of land 70 feet wide lying Westerly of and contiguous to a line bearing North 09 degrees 57 minutes 24 seconds East passing through above mentioned Point "A".

(Recording No. 95-614194)

PARCEL NO. 41:

That portion of the Northeast quarter of the Northeast quarter of Section 22, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING on the South line of the County Road, 33 feet South of the Section line, between Sections 15 and 22 and distant 749 feet West from the Section line between Sections 22 and 23; thence East parallel to said Section line, a distance of 155 feet to a point in South border of the Hayden Canal; thence following the South border of said Hayden Canal in a Southeasterly direction 525 feet to a point on said border the opposite Southeast corner of bridge and 2 feet South thereof in line with North line of county road running Easterly to Mesa City; thence Northwesterly in a curve Northward, having a radius of 872 feet following the base of the road bed of the PHOENIX, TEMPE & MESA CITY RAILWAY, a distance of 250 feet; thence in a straight line Northwesterly following the base of said Railway grade, a distance of 415 feet to the POINT OF BEGINNING.

(Book 39 of Deeds, page 456 and corrected in Book 40 of Deeds, page 10)

PARCEL NO. 42:

That 20 foot wide strip of land as excepted in the Deed dated September 19, 1956 from Southern Pacific Company to Muskingum Superlite Realty, Inc., more particularly described in said deed as follows:

COMMENCING at a point on the North Section line of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, 902 feet East of the Northwest corner of the Northeast quarter of Section 23; thence East along said Section line 500 feet; thence in a Southwesterly direction to a point 350 feet South of the POINT OF BEGINNING; thence North 350 feet to the POINT OF BEGINNING lying in Maricopa County, Arizona.

EXCEPTING there from, a strip of land, 20 feet in width, lying equally 10.0 feet on each side of the following described center line:

BEGINNING at a point in the north line of the above described parcel of land, distant thereon easterly, 339.67 feet from the northwest corner of said parcel a of land; thence South 0°39'45" West, parallel with and distant 339.67 feet easterly, measured at right angles, from the westerly line of said parcel of land, 112.22 feet to a point in the southerly line of said parcel of land.

(Book 37 of Deeds, page 533)

PARCEL NO. 43:

Right of way to construct, maintain and operate a Railroad together with all necessary spurs, sidetracks and structures usually appurtenant thereto within the limits of a strip of land 25 feet wide being on the North side of the centerline of the Railroad tracks as of November 4, 1902 - the parcel described as follows:

BEGINNING at the Southwest corner of Lot 94, Block 12, EAST TEMPE, according to Book 1 of Maps, page 58, records of Maricopa County, Arizona; thence along the alley in an Easterly direction 200 feet; thence North 25 feet; thence West 200 feet; thence South 25 feet to the POINT OF BEGINNING.

(Book 59 of Deeds, page 58)

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA
September 26, 2003
161874b.leg

EXHIBIT "B" TO EXHIBIT D

LIST OF LEASES AND LICENSES TO BE ASSIGNED

EXHIBIT "B"**U.P.R.R. REAL ESTATE DEPARTMENT****DONATION OF LAND****CITY OF TEMPE, AZ****MP 914.3 TO MP 916.35****FOLDER NO. 0161874**

AUDIT	PARTY NAME	PURPOSE	CITY	ST	MP START	ANNUAL AMT	DISPOSITION	CONTAINED
SPZ8487	PHILLIPS, C. M.	None	TEMPE	AZ		\$	Assigned	Totally
222590	WHITE, RAYMOND H.	Lease of Land for Retail Business	TEMPE	AZ	915.16	\$6,605.49	Assigned	Totally
201924	ARIZONA PUBLIC SERVICE	Pipeline, Subagreement	TEMPE	AZ	914.42	\$0	Assigned	Totally
S113873	ARIZONA, STATE OF	None	TEMPE	AZ		\$	Assigned	Totally
S123930	STATE OF ARIZONA	None	TEMPE	AZ		\$	Assigned	Totally
S712862	TEMPE CITY OF	Crossing - Public Roadway	TEMPE	AZ	914.46	\$0	Assigned	Totally
S208337	TEMPE DEPOT INC	Crossing - Private Roadway	TEMPE	AZ	914.44	\$0	Assigned	Totally
S208345	ARIZONA PUBLIC SERVICE CORP.	Wire	TEMPE	AZ	914.43	\$0	Assigned	Totally
S204069	SOUTHWEST GAS CORPORATION	Pipeline	TEMPE	AZ	916.04	\$298.71	Assigned	Totally
S199972	SALT RIVER PROJECT	Wire	TEMPE	AZ	915.61	\$0	Assigned	Totally
S198791	ARIZONA BOARD OF REGENTS	Pipeline	TEMPE	AZ	915.38	\$0	Assigned	Totally
S194891	AIR PRODUCTS & CHEMICALS	Pipeline	TEMPE	AZ	915.51	\$0	Assigned	Totally
S194892	AIR PRODUCTS & CHEMICALS	Pipeline	TEMPE	AZ	914.47	\$0	Assigned	Totally
S193497	BOARD OF REGENTS, UNIV OF ARIZONA	Pipeline	TEMPE	AZ	914.99	\$0	Assigned	Totally
S193498	BOARD OF REGENTS, UNIV OF ARIZONA	Wire	TEMPE	AZ	914.99	\$0	Assigned	Totally
S193500	AIR PRODUCTS & CHEMICALS	Pipeline	TEMPE	AZ	915.38	\$0	Assigned	Totally
S190931	ARIZONA PUBLIC SERVICE CO	Wire	TEMPE	AZ	915.53	\$0	Assigned	Totally
S190940	SUPERLITE BUILDER'S SUPPLY INC	Wire	TEMPE	AZ	914.89	\$0	Assigned	Totally
S190941	SUPERLITE BUILDER'S SUPPLY INC	Pipeline	TEMPE	AZ	914.92	\$0	Assigned	Totally
S188970	COXCOM INC	Wire	TEMPE	AZ	915.51	\$0	Assigned	Totally
S185762	QWEST CORPORATION	Wire	TEMPE	AZ	914.37	\$0	Assigned	Totally
S185764	QWEST CORPORATION	Wire	TEMPE	AZ	914.43	\$0	Assigned	Totally
S182872	ARIZONA STATE UNIVERSITY	Pipeline	TEMPE	AZ	915.06	\$0	Assigned	Totally
S173871	QWEST CORPORATION	Wire	TEMPE	AZ	915.5	\$0	Assigned	Totally
S172851	ARIZONA PUBLIC SERVICE CO	Wire	TEMPE	AZ	916.03	\$0	Assigned	Totally

EXHIBIT "B"

U.P.R.R. REAL ESTATE DEPARTMENT

DONATION OF LAND

CITY OF TEMPE, AZ

MP 914.3 TO MP 916.35

FOLDER NO. 0161874

AUDIT	PARTY NAME	PURPOSE	CITY	ST	MP START	ANNUAL AMT	DISPOSITION	CONTAINED
S172609	ARIZONA STATE UNIVERSITY	Lease of Land for Public/Private Pal	TEMPE	AZ	914.96	\$3,584.26	Assigned	Totally
S171020	QWEST CORPORATION	Wire	TEMPE	AZ	915.38	\$0	Assigned	Totally
S113241	ARIZONA PUBLIC SERVICE CO	Wire	TEMPE	AZ	914.72	\$0	Assigned	Totally
S152819	ARIZONA STATE UNIVERSITY	Pipeline	TEMPE	AZ	915.18	\$0	Assigned	Totally
S172181	ARIZONA BOARD OF REGENTS	Pipeline	TEMPE	AZ	915.23	\$0	Assigned	Totally
S172405	QWEST CORPORATION	Wire	TEMPE	AZ	915.53	\$0	Assigned	Totally
S178165	TEMPE CITY OF	Pipeline	TEMPE	AZ	915.53	\$0	Assigned	Totally
S202863	TEMPE CITY OF	Pipeline	TEMPE	AZ	915.56	\$0	Assigned	Totally

EXHIBIT E

CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, CITY OF TEMPE, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
3. UNION PACIFIC RAILROAD COMPANY'S office address is 1416 Dodge Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Title: _____
Date: _____